

FILED
Superior Court of California
County of Placer

OCT 19 2020

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Executive Officer & Clerk
By: M. Taylor, Deputy

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*The People of the State of California ex rel.
Placer County Air Pollution Air Control District
Feather River Air Quality Management District*

CALIFORNIA SUPERIOR COURT
COUNTY OF PLACER

PEOPLE FOR THE STATE OF
CALIFORNIA, *ex rel.* PLACER COUNTY
AIR POLLUTION CONTROL DISTRICT
and FEATHER RIVER AIR QUALITY
MANAGEMENT DISTRICT,

Plaintiffs,

vs.

JAMES DAY, individually; BARBARA DAY,
individually, MID VALLEY CONSULTING &
GENERAL ENGINEERING, a California
corporation; and DOES 1-10, inclusive,

Defendants.

Case No.: SCV-0043170

[STIPULATED] FINAL JUDGMENT
AND PERMANENT INJUNCTION

DATE: 10/19/20
TIME: 8:30 am
DEPT: 42

Trial Date: 9/29/2020

[Stipulated] Final Judgment and Permanent Injunction in
People *ex rel.* PCAPCD & FRAQMD v. James Day, *et al.* (SCV-0043170)

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1 This Stipulated Judgment and Permanent Injunction (“Final Judgment”) is entered into by
2 Plaintiff, the People of the State of California *ex rel.* Placer County Air Pollution Control District and
3 Feather River Air Quality Management District (“People *ex rel.* PCAPCD & FRAQMD”; “the
4 People”; or “the Plaintiff Air Districts”) and Defendants JAMES DAY, BARBARA DAY, and MID
5 VALLEY CONSULTING AND GENERAL ENGINEERING., a California Corporation
6 (collectively, “Defendants”). For the purposes of this Final Judgment, the People and the Defendants
7 shall be referred to collectively as “Parties” and individually as “Party.” Both Parties have stipulated
8 and consented to the entry of this Final Judgment. The Parties have agreed to settle the
9 above-captioned matter without further litigation, as set forth below.

10 INTRODUCTION

11 This action was filed on July 24, 2019 by the People *ex rel.* PCAPCD & FRAQMD regarding
12 Defendants’ compliance with state laws and regulations governing air pollution in their provision of
13 air quality testing, construction, maintenance, and repair services at six (6) primary gas dispensing
14 facilities (“GDF”) within the respective jurisdictions of Placer County Air Pollution Control District
15 (“PCAPCD”) and Feather River Air Quality Management District (“FRAQMD”).¹ As set forth in the
16 Complaint, the People allege that Defendants violated Chapter 4 of Division 26 of the California Health
17 & Safety Code sections 42402.4, 42402.3(a), 42402.2(a), 42402.1(a), 42402(b)(1), 42402(a), 41954(f),
18 41960.2(a)-(b), 42303.5; regulations promulgated under this chapter, including California Code of
19 Regulations, title 23, sections 2715(e) and 2611; California Air Resources Board Executive Orders VR-
20 202-X and VR-204-W and/or earlier iterations of these Orders; as well as PCAPCD Rule 214 Sec. 301,
21 PCAPCD Rule 214 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules
22 3.8.E.1 and 3.13.

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24
25 ¹ Those six stations are: Hira’s Beacon, 510 Washington Blvd., Roseville, CA 95678 (“Hira’s Beacon”);
26 Arco AM/PM Riverside, 998 Riverside Road, Roseville, CA 95678 (“Riverside Arco”); Rowdy
27 Randy’s, 650 High Street, Auburn, California, 95603 (“Rowdy Randy’s”); Arco AM/PM, 13405
28 Lincoln Way, Auburn, CA 95603; Washington Minimart, 999 Washington Blvd., Roseville, California
95678 (“Washington Minimart”); and 5th Street Gas Station, 929 5th Street, Marysville, CA 95901 (“5th
Street Gas”).

1 Since the filing of the Complaint, representatives of the People *ex rel.* PCAPCD & FRAQMD
2 and Defendants have engaged in settlement discussions. In these negotiations, the People were
3 represented by Aqua Terra Aeris Law Group, and enforcement counsel for PCAPCD and
4 FRAQMD, by and through Matthew C. Maclear, Erica A. Maharg, and James T. Brett. Defendants
5 were represented by the Hughey Phillips, LLP, by and through Galen Gentry and Noah Phillips.
6 The Parties have now agreed to settle this matter without further litigation pursuant to the terms of
7 this Final Judgment for purposes of furthering the public interest.

8 **FINAL JUDGMENT AND PERMANENT INJUNCTION**

9 The Parties, after opportunity for review by counsel, hereby stipulate and consent to the entry
10 of the Final Judgment as set forth below.

11 **1. JURISDICTION**

12 The Parties stipulate and agree that the Superior Court of California, County of Placer has
13 subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the
14 Parties to this Final Judgment.

15 **2. SETTLEMENT OF DISPUTED CLAIMS**

16 This Final Judgment is neither an admission nor denial by Defendants regarding any issue of
17 law or fact in the above-captioned matter or any violation of law. The Parties enter into this Final
18 Judgment pursuant to a compromise and settlement of disputed claims for purposes of furthering the
19 public interest. The People *ex rel.* PCAPCD & FRAQMD believe that the resolution embodied in
20 this Final Judgment is fair and reasonable and fulfills the People's enforcement objectives; that
21 except as provided in this Final Judgment, no further action is warranted concerning the allegations
22 contained in the Complaint; and that entry of this Final Judgment is in the best interest of the public.
23 Defendants agree that this Final Judgment is a fair and reasonable resolution of the matters alleged
24 in the Complaint. The Parties also waive their separate, independent and individual rights to appeal.

25 **3. DEFINITIONS**

26 Except where otherwise expressly defined in this Final Judgment, all terms shall be
27 interpreted consistent with Chapter 4 of Division 26 of the California Health & Safety Code
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1 sections; the regulations promulgated under this chapter, including California Code of Regulations,
2 title 23, sections 2715(e) and 2611; California Air Resources Board Executive Orders VR-202-X and
3 VR-204-W; as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214 Sec. 303, PCAPCD Rule 214
4 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13.

5 **4. PAYMENTS AND CIVIL PENALTIES**

6 Upon Entry of this [Stipulated] Final Judgment², Defendants shall pay civil penalties to the
7 Treasurer of Placer County Air Pollution Control District in the amount and manner described
8 below. Defendants, and each of them, are jointly and severally liable for the payment of penalties in
9 this action.

10 **4.1 Civil Penalties**

11 Defendants shall be liable for the total amount of Two-Hundred and Fifty Thousand Dollars
12 (\$250,000), pursuant to section 42405 of the California Health and Safety Code, as a civil penalty
13 by wire transfer or certified funds. Of this civil penalty, at least FIFTY THOUSAND DOLLARS
14 (\$50,000) shall be paid by Defendants within ninety (90) days of Entry of Final Judgment on
15 counsel for Defendants. The remaining TWO HUNDRED THOUSAND DOLLARS (\$200,000)
16 shall be paid by Defendants in equal monthly installments of Three Thousand Three Hundred and
17 Thirty Three Dollars (\$3,333) for a period of sixty (60) months, with the first of those monthly
18 payments beginning on the first day of the month immediately following Defendants' initial
19 payment of at least Fifty Thousand Dollars (\$50,000).

20 The amount owed by Defendants under the Final Judgment will be secured by a Deed of
21 Trust, attached hereto as **Exhibit A** (hereafter "the Deed of Trust") on the property owned by
22 Defendants JAMES DAY and BARBARA DAY located in Yuba County and commonly known as
23 831 N. Beale Rd., Marysville, CA 95901 (hereafter "the North Beale Property"). The Parties have
24 stipulated to a Writ of Execution for the sale of the North Beale Property via a Judgment by
25 Confession pursuant to California Code of Civil Procedure sections 1132 and 1133, provided, that,
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27
28 ² Entry of Final Judgment is the date on which the Court files the [Stipulated] Final Judgment under Placer County
Superior Court No. SCV-0043170

1 the People *ex rel.* PCAPCD & FRAQMD shall not file the Judgment by Confession with the Yuba
2 County Superior Court and shall not levy upon the North Beale Property pursuant to the Stipulated
3 Writ of Execution unless any Defendant has committed a Material Breach (as such term is defined
4 in Section 6 below) of this Stipulated Final Judgment. The Stipulated Writ of Execution and
5 Judgment by Confession are attached hereto as **Exhibits B** and **C**, respectively. Defendants agree
6 to not voluntarily encumber the North Beale Property for five (5) years, or until the total amount
7 owed under the Final Judgment is paid. If Defendants refinance the existing mortgage on the North
8 Beale Property, elect to sell the North Beale Property, or otherwise enter into further voluntary
9 encumbrances³ of the property within five (5) years of entry of Final Judgment, and/or prior to the
10 payment of the whole amount owed by Defendants under the Final Judgment, the entire remaining
11 balance owed by Defendants will become due and payable immediately, and at that time the People
12 may exercise their rights under the Deed of Trust and/or the Judgment by Confession and Stipulated
13 Writ of Execution. In the event of any involuntary encumbrance of the North Beale Property (i.e.
14 the filing of a tax lien), Defendants shall give Plaintiff notice in writing, and PCAPCD and/or
15 FRAQMD shall provide Defendants with sixty (60) days' notice and opportunity to obtain the
16 removal of any such involuntary encumbrance. If any involuntary encumbrance is not removed
17 within sixty (60) days, it will be treated the same as a voluntary encumbrance.

18 Defendants shall provide thirty (30) days' advance written notice to PCAPCD & FRAQMD
19 prior to the refinance, sale, or further voluntary encumbrance of the North Beale Property.
20 Defendants shall obtain an agreement from any title company involved with the sale or refinance of
21 the North Beale Property to distribute the remaining penalty balance to PCAPCD & FRAQMD at
22 the time of refinance, sale, or encumbrance of the North Beale Property if within five (5) years of
23 the Entry of Final Judgment or prior to payment of the entire amount due under the Final Judgment.
24 Within sixty (60) days of Entry of Final Judgment, Defendants shall enter into a litigation guarantee
25 for the North Beale Property and will provide notice thereof to senior lien holders; failure to secure
26

27
28 ³ Encumbrance is defined as including, but not limited to, any mortgage, deed of trust, judgment lien, tax lien, option to
sale, sale or division of ownership interest, declaration of homestead or transfer of any portion of the real property.

1 a litigation guarantee and provide notice to senior lien holders within sixty (60) days of Entry of
2 Final Judgment shall constitute a material breach of the terms of this Final Judgment.

3 The People agree to refrain from recording abstracts of judgment against the properties
4 owned by Defendants JAMES DAY and BARBARA DAY, commonly known as 1097 Bronco
5 Drive, Plumas Lake, CA 95961 and 2551 Plumas Arboga Road, Olivehurst, California 95691 unless
6 and until there has been a Material Breach, defined below, by Defendants of the terms of the Final
7 Judgment, including but not limited to breaches of injunctive, notice, and payment terms. Upon
8 such Material Breach, if within five (5) years of the Entry of Final Judgment and prior to full
9 payment of the full amount owed under this Final Judgment, the People are entitled to record
10 abstracts of judgment against the real properties owned by Defendants JAMES DAY and
11 BARBARA DAY, including but not limited to those located at 1097 Bronco Drive, Plumas Lake,
12 CA 95961 and 2551 Plumas Arboga Road, Olivehurst, California 95691. In the event of any
13 Material Breach by any Defendant of their notice, injunctive or payment obligations hereunder, the
14 People agree to first seek recovery of any remaining unpaid civil penalty balance from (a) levy of
15 the North Beale Property pursuant to the Judgment by Confession and Stipulated Writ of Execution,
16 and/or (b) nonjudicial foreclosure of the Deed of Trust recorded against the North Beale Property.
17 If the People seek to recover any unpaid penalty balance hereunder through both the Stipulated Writ
18 of Execution and the Deed of Trust, the People acknowledge and agree that they shall only be
19 entitled to a single recovery of the aggregate unpaid civil penalty balance from the proceeds of sale
20 of the North Beale Property.

21 Defendants agree to reimburse the People for all costs and fees incurred as a result of
22 presenting Judgment by Confession, Writ of Execution and levy for the North Beale Property and/or
23 for nonjudicial foreclosure of the Deed of Trust.

24 **4.2 Form and Delivery of Payment**

25 Defendants shall timely submit to the office of the Placer County Air Pollution Control
26 District the payment in certified funds or via a wire transfer made payable to the Treasurer of the
27 Placer County Air Pollution Control District.

1 Payment shall be deemed timely if post-marked by the United States Postal Service by the
2 date that such payment is due, or upon delivery by such date if delivered personally, by overnight
3 mail, or wire transfer.

4 Payment may be made by certified funds to: Treasurer of the Placer County Air Pollution
5 Control District, or via wire transfer (with instructions being provided upon request from
6 Defendant)..

7 **5. INJUNCTIVE RELIEF**

8 Pursuant to the provisions of California Health & Safety Code sections 41513 and 42452,
9 Defendants are permanently enjoined for a period of five (5) years from violating all air quality
10 control laws, including but not limited to, Chapter 4 of Division 26 of the California Health &
11 Safety Code sections 42402.4, 42402.3(a), 42402.2(a), 42402.1(a), 42402(b)(1), 42402(a), 41954(f),
12 41960.2(a)-(b), 42303.5; regulations promulgated under this chapter, including California Code of
13 Regulations, title 23, sections 2715(e) and 2611; applicable California Air Resources Board
14 Executive Orders VR-202 and VR-204; as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214
15 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13.
16 Failure to comply with this Final Judgment, including any of its terms or the specific additional
17 injunctive provisions that follow, may subject Defendants to contempt, shall constitute a material
18 breach of the Final Judgment, and shall result in the remaining balance owed by Defendants under
19 the Final Judgment becoming due and payable at the time of such material breach.

20 **5.1 Specific Injunctive Provisions**

21 **5.1.a** Defendants and their employees must obtain and maintain current air quality
22 certifications as required by Air Resources Board Executive Orders, Installation, Operation and
23 Maintenance Manuals ("IOMs"), and PCAPCD & FRAQMD Advisories for air quality and vapor
24 recovery services provided.

25 **5.1.b** Defendants shall conduct quality assurance and quality control verifications of the
26 accuracy of the data and test results submitted by Defendants and their employees to PCAPCD,
27 FRAQMD and GDF owners and operators.

5.1.c Defendants shall provide all air quality testing and service certifications for Defendants and their employees to the Plaintiff Air Districts on an annual basis, and no later than January 15th of each year.

5.1.d Defendants shall provide a minimum of 72 hours advance notice, in writing, of the performance by them, or any of their employees, of any air quality services or testing subject to the jurisdiction of PCAPCD or FRAQMD. On a case-by-case basis, the District may approve shorter notification time. All approvals will be provided in writing. Defendants shall coordinate with Plaintiff Air District personnel to ensure that those personnel are present for such air quality services and testing in the Plaintiff Air Districts' respective jurisdictions; if the Plaintiff Air Districts determine observation for an particular testing or service event is not necessary, this requirement will be waived in writing. The services and testing for which advance notice to the Plaintiff Air Districts is required under subsection 5.1.d include:

General Activities Requiring Notification:

- In Station Diagnostic (ISD) alarm response or troubleshooting
- Certified Unified Program Agencies (CUPA) alarm response or troubleshooting
- Designated operator work
- Any work to correct/identify defects as found on the California Air Resources Board (CARB) Vapor Recovery Equipment Defect List
- Point of sale software/hardware work
- Dispenser work
- Any Veeder-Root programming
- Any Incon programming
- Any tank monitoring programming
- Performing a “cold start”
- Any other testing specified by CUPA authorities intended for use at gasoline dispensing facilities, including tests not yet approved.

Test Procedures Found in CARB Executive Orders:

- VR 201 Exhibit 5 Vapor to Liquid Ratio Test
- VR 201 Exhibit 7 Nozzle Bag Test Procedure
- VR 201 Exhibit 9 Liquid Condensate Test Procedure
- VR 201 Exhibit 14 Dispenser Integrity Test
- VR 201 Exhibit 15 ARID Technologies AT-150 Permeator Compliance Test Procedure
- VR 202 Exhibit 5 Vapor to Liquid Ratio Test
- VR 202 Exhibit 7 Nozzle Bag Test Procedure
- VR 202 Exhibit 9 Veeder-Root ISD Operability Test Procedure

- VR 202 Exhibit 10 FFS Incon ISD Operability Test Procedure
- VR 202 Exhibit 11 Liquid Condensate Test Procedure
- VR 202 Exhibit 14 Dispenser Integrity Test
- VR 202 Exhibit 15 ARID Technologies AT-150 Permeator Compliance Test Procedure
- VR 203 Exhibit 5 Liquid Removal Test Procedure
- VR 203 Exhibit 7 Nozzle Bag Test Procedure
- VR 203 Exhibit 8 VST ECS; Hydrocarbon Sensor Verification Test Procedure
- VR 203 Exhibit 9 VST ECS; Determination of Processor Activation Pressure
- VR 203 Exhibit 10 Veeder-Root; Vapor Pressure Sensor Verification Test Procedure
- VR 203 Exhibit 11 Veeder-Root Vapor Polisher, Operability Test Procedure
- VR 203 Exhibit 12 Veeder-Root Vapor Polisher; Hydrocarbon Emissions Verification Test Procedure
- VR 203 Exhibit 13 Hirt VCS 100 Processor; Operability Test Procedure
- VR 203 Exhibit 14 Franklin Fueling Systems CAS; Station Pressure Performance Test Procedure
- VR 203 Exhibit 15 VST Green Machine Compliance Test Procedure
- VR 203 Exhibit 16 Liquid Condensate Trap Compliance Test Procedure
- VR 204 Exhibit 5 Liquid Removal Test Procedure
- VR 204 Exhibit 7 Nozzle Bag Test Procedure
- VR 204 Exhibit 8 VST ECS; Hydrocarbon Sensor Verification Test Procedure
- VR 204 Exhibit 9 VST ECS; Determination of Processor Activation Pressure
- VR 204 Exhibit 10 Veeder-Root; Vapor Pressure Sensor Verification Test Procedure
- VR 204 Exhibit 11 Veeder-Root Vapor Polisher, Operability Test Procedure
- VR 204 Exhibit 12 Veeder-Root Vapor Polisher; Hydrocarbon Emissions Verification Test Procedure
- VR 204 Exhibit 13 Hirt VCS 100 Processor; Operability Test Procedure
- VR 204 Exhibit 14 Franklin Fueling Systems CAS; Station Pressure Performance Test Procedure
- VR 204 Exhibit 15 VST Green Machine Compliance Test Procedure
- VR 204 Exhibit 16 Liquid Condensate Trap Compliance Test Procedure
- VR 204 Exhibit 17 Veeder-Root; ISD Vapor Flow Meter Operability Test Procedure
- VR 204 Exhibit 19 INCON Flow Meter Operability Test Procedure
- VR 204 Exhibit 20 INCON Pressure Sensor Operability Test Procedure

Test Procedures found on CARB's Website:

- TP 201.1b Static Torque of Rotatable Phase I Adaptors
- TP 201.1c Leak Rate of Drop Tube/Drain Valve Assembly
- TP 201.1d Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves
- TP 201.13 Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves
- TP 201.3 Determination of 2 Inch WV Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities
- TP 201.3c Determination of Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test)
- TP 201.4 Dynamic Back Pressure

- TP 201.5 Air to Liquid Volume
- TP 201.6 Determination of Liquid Removal of Vapor Recovery Systems of Dispensing Facilities
- TP 201.6c Compliance determination of Liquid Removal Rate
- TP 206.3 Determination of Static Pressure Performance of Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks
- Any other testing specified by CARB or CARB approved test procedure intended for use at gasoline dispensing facilities, including tests not yet approved.

Certified Unified Program Agencies (CUPA) Activities:

- CCR 22637(g) – Triennial Secondary Containment Testing and Secondary Containment Repair Testing
- CCR 2637.1(f) – Annual Spill Bucket Testing and Spill Bucket Repair Testing
- CCR 2637.2(f) – Triennial Overfill Prevention Testing and Overfill Prevention Repair Testing
- CCR 2638(e) – Annual Monitoring Certification Testing and Monitoring Certification Repair Testing
- 2644.1 (a)(4) – Initial Enhanced Leak Detection Testing at install and Suspected Leak Investigations

Irrespective of whether the Plaintiff Air Districts waive the right to be present at the notified testing or services, notice provided by Defendants under this subsection shall include a detailed scope of work, the name and address of the facility where such work will take place, the names of all technicians working on site, all applicable certifications held by each technician required to perform such work, and the dates and times the work will be performed. In addition to the individuals listed in section 8, below, notifications provided to PCAPCD pursuant to this subsection shall be sent to vaporrecoverytesting@placer.ca.gov or pcapcd@placer.ca.gov.

5.1.e On a semi-annual basis, Defendants shall provide all documents in their possession to PCAPCD & FRAQMD evidencing any and all air quality services and testing enumerated in section 5.1.d, and performed by Defendants and their employees within the Plaintiff Districts' respective jurisdictions, and for any business entity in which any of the Defendants have equal to or more than a 25% ownership interest.

5.1.f For any business entity that performs the air quality testing or services enumerated in section 5.1.d within PCAPCD's & FRAQMD's jurisdictions, and which (a) is associated or affiliated with JAMES DAY, (b) is party to any joint venture or partnership with JAMES DAY, (c)

1 has hired JAMES DAY as a contractor or consultant for services having a value equal to or in
2 excess of Six Hundred Dollars (\$600.00) in the aggregate within any one (1) year period
3 (irrespective of whether JAMES DAY receives compensation for such services), (d) has engaged
4 JAMES DAY to provide air quality testing or services, or (e) for any such business entity in which
5 JAMES DAY has less than a 25% ownership interest, under these circumstances, JAMES DAY
6 must notify the Plaintiff Air Districts of any of the aforementioned business relationships within
7 fifteen (15) days of forming such business relationships. JAMES DAY must provide notice of those
8 business relationships described above and existing at the time of the Entry of Final Judgment
9 within fifteen (15) days of Entry of Final Judgment.

10 **6. "MATERIAL BREACH" - VIOLATION OF INJUNCTION AND FAILURE TO PAY**
11 **PENALTIES**

12 6.1. "Material Breach" is defined as follows:

13 6.1.a Failure to satisfy any injunctive, notice or payment term as required under this Final
14 Judgment.

15 6.1.b Failure to provide truthful and accurate information or notices as described in section
16 5.1 shall constitute a material breach of the Final Judgment.

17 6.1.c Failure to satisfy any monthly payment obligation for two (2) or more consecutive
18 months, or failure to pay previously owed and unpaid penalties from the previous month's payment
19 in the following month's penalty installment payment shall constitute a material breach of the Final
20 Judgment, unless otherwise agreed to by the Parties in writing, and approved by counsel.

21 6.2 Upon any Material Breach of any injunctive, notice, and payment term described in the
22 Final Judgment, the entire remaining amount owed by Defendants under the Final Judgment shall
23 become immediately due and payable and empower the People to exercise their rights under the
24 Final Judgment, Stipulated Writ of Execution, and Judgment by Confession..

25 **7. MATTERS COVERED BY THIS FINAL JUDGMENT**

26 **7.1** This Final Judgment is a final and binding resolution and settlement of all claims,
27 violations, or causes of action alleged by the People *ex rel.* PCAPCD & FRAQMD in the Complaint
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1 against Defendants’ and any claims that could have been alleged based on conduct known to
2 PCAPCD & FRAQMD. The matters described in the previous sentences are “Covered Matters.”
3 Any claim, violation, or cause of action that is not a Covered Matter is a “Reserved Claim.”
4 Reserved Claims shall mean any unknown violation or any violation that occurs after October 19,
5 2020. The Parties reserve the right to pursue any Reserved Claim and to defend against any
6 Reserved Claim. PCACPD & FRAQMD acknowledge and agree that, as of the date of this Final
7 Judgment, they are not aware of the existence of any Reserved Claim.

8 **7.2** In any subsequent action that may be brought by the People *ex rel.* PCAPCD &
9 FRAQMD based on any Reserved Claim, Defendants agree that they will not assert that failing to
10 pursue any Reserved Claim as part of this action constitutes claim-splitting, but only if the claim
11 asserted by the People *ex rel.* PCAPCD & FRAQMD in such subsequent action is a *bona fide*
12 Reserved Claim.

13 **7.3** The provisions of paragraph 7.1 are effective on the date of Entry of the Final Judgment.
14 The continuing effect of paragraph 7.1 is expressly conditioned on Defendants’ full payment of the
15 amounts due under this Final Judgment.

16 **7.4** Paragraph 7.1 does not limit the ability of the People to enforce the terms of this Final
17 Judgment.

18 **7.5** Defendants covenant not to pursue any civil or administrative claims against the People
19 *ex rel.* PCAPCD & FRAQMD or against their officers, employees, representatives, agents, or
20 attorneys arising out of or related to any Covered Matter.

21 **7.6** Any event that is beyond the control of Defendants and that prevents Defendants from
22 timely performing any obligation under Paragraph 5 of this Final Judgment, despite Defendants’
23 best efforts to fulfill that obligation, is a “force majeure” event. For purposes of this Final
24 Judgment, a “Force Majeure Event” is any circumstance occurring after Entry of Final Judgment
25 which beyond the control of a Party, their contractors, or any entity controlled by the Party,
26 including without limitation, any act of God, war, fire, earthquake, flood, windstorm, pandemic, or
27 natural catastrophe; criminal acts; civil disturbance, vandalism, sabotage, or terrorism; restraint by
28

1 court order or public authority or agency; or action or non-action by, or inability to obtain the
2 necessary authorizations or approvals from any governmental agency. A Force Majeure Event shall
3 not include normal inclement weather, acts or omissions of Defendants or its employees,
4 representatives or agents, or Defendants' financial inability to fund or complete the obligation(s)
5 under this Final Judgment. Defendants shall provide notice to Plaintiff orally or by electronic or
6 facsimile transmission as soon as practicable, but not later than ten (10) days after the time
7 Defendants first knew of, or by the exercise of due diligence, should have known of, a claimed
8 Force Majeure Event. The notice shall describe the event and the length of any extension sought. If
9 Plaintiff agrees that a Force Majeure Event, as defined by this paragraph, has occurred, Plaintiff
10 shall agree to extend the time for Defendants to perform the affected requirements for the time
11 necessary to complete those obligations. Failures resulting from a Force Majeure Event shall not be
12 considered a breach of this Final Judgment, provided Defendants complies with the terms of this
13 paragraph. If Plaintiff does not agree that a Force Majeure Event, as defined by this paragraph, has
14 occurred or does not agree to the length of the extension of time sought by Defendants, Plaintiff's
15 position shall be binding, unless Defendants invokes Dispute Resolution under section 14 of this
16 Final Judgment. In any such dispute, Defendants bears the burden of proving, by a preponderance
17 of the evidence, that each claimed force majeure event is a Force Majeure Event, that Defendants
18 gave the notice required by this paragraph, that the Force Majeure Event caused any failure to
19 comply or delay in compliance with an obligation of this Final Judgment that Defendants claim was
20 attributable to that event, and that Defendants exercised reasonable efforts to prevent or minimize
21 any failure or delay in compliance caused by the event. The requirement that Defendants exercise
22 their "best efforts to fulfill the obligation" includes the requirement that Defendants use their best
23 efforts to anticipate any potential force majeure event and use best efforts to address the effects of
24 any potential force majeure event: (1) as it is occurring, and (2) following the force majeure event,
25 such that the delay is minimized to the greatest extent possible.

26 **8. NOTICE**

27 All submissions and notices required by this Final Judgment shall be sent to:
28

1 For the People *ex rel.* PCAPCD & FRAQMD:

2 Erik White
3 Bruce Springsteen, Compliance Supervisor
4 Air Pollution Control Officer
5 Placer County Air Pollution Control District
6 110 Maple Street,
7 Auburn, CA 95603

8 Christopher Brown, AICP
9 Air Pollution Control Officer
10 Feather River Air Quality Management District
11 541 Washington Ave.
12 Yuba City, CA 95991

13 With a copy to:

14 Matthew C. Maclear
15 Aqua Terra Aeris Law Group
16 mcm@atalawgroup.com

17 For Defendants JAMES DAY, BARBARA DAY, and MID VALLEY CONSULTING AND
18 GENERAL ENGINEERING:

19 James Day
20 1097 Bronco Drive
21 Plumas Lake, CA 95961

22 With a copy to:

23 Galen Gentry
24 Hughey Phillips, LLP
25 Counsel of Record for Defendants
26 520 9th St, Suite 230
27 Sacramento, CA 95814

28 Any Party may change its notice name and address by informing the other party in writing, but no change is effective until it proof of receipt is confirmed. All notices and other communications required or permitted under this Final Judgment that are properly addressed as provided in this paragraph are effective upon delivery if delivered personally or by overnight mail, or are effective five (5) days following deposit in the United States mail, postage prepaid, if delivered by First Class mail.

1 **9. EFFECT OF FINAL JUDGMENT**

2 Except as expressly provided in this Final Judgment, nothing in this Final Judgment is
3 intended nor shall it be construed to preclude the People *ex rel.* PCAPCD & FRAQMD, or any
4 state, county, city, or local agency, department, board or entity from exercising its authority under
5 any law, statute or regulation. Except as expressly provided in this Final Judgment, Defendants
6 retain all of their defenses to the exercise of the aforementioned authority

7 **10. LIABILITY OF THE PEOPLE**

8 The People *ex rel.* PCAPCD & FRAQMD shall not, in the absence of negligence or breach
9 of any duty imposed by law, be liable for any injury or damage to persons or property resulting
10 from acts or omissions by Defendants, their directors, officers, employees, agents, representatives or
11 contractors, in merely carrying out activities pursuant to this Final Judgment, nor shall the People *ex*
12 *rel.* PCAPCD & FRAQMD be held as a party to or guarantor of any contract entered into by
13 Defendants, its directors, officers, employees, agents, representatives or contractors, in carrying out
14 the requirements of this Final Judgment.

15 **11. NO WAIVER OF RIGHT TO ENFORCE**

16 The failure of the People to enforce any provision of this Final Judgment shall neither be
17 deemed a waiver of such provision nor in any way affect the validity of this Final Judgment. The
18 failure of the People *ex rel.* PCAPCD & FRAQMD to enforce any such provision shall not preclude
19 it from later enforcing the same or any Reserved Claim of this Final Judgment. Except as expressly
20 provided in this Final Judgment, Defendants retain all defenses allowed by law to any such later
21 enforcement. No oral advice, guidance, suggestions or comments by employees or officials of any
22 Plaintiff Air District regarding matters covered in this Final Judgment shall be construed to relieve
23 any Party of its obligations under this Final Judgment, unless made in writing and approved by
24 counsel.

25 **12. FUTURE REGULATORY CHANGES**

26 Nothing in this Final Judgment shall excuse Defendants from meeting any more stringent
27 requirements that may be imposed by applicable law or by any changes in the applicable law,
28

1 including but not limited to, any changes to Plaintiff Air District Rules or California Air Resources
2 Board Executive Orders.

3 **13. APPLICATION OF FINAL JUDGMENT**

4 This Final Judgment shall apply to and be binding upon the People *ex rel.* PCAPCD &
5 FRAQMD and upon Defendants, separately and each of them, and their officers, managers and
6 employees., agents performing work subject to the Air District's independent jurisdictions,
7 successors and assigns, provided, that, this Final Judgment shall not be applicable to any successor-
8 in-interest of Mid Valley Consulting & General Engineering following an arms-length sale of assets
9 to any *bona fide* third-party unaffiliated with any Defendants. If Defendants sell more than 25% of
10 Mid Valley Consulting's assets, the payment of the remaining of penalties owed and payable under
11 this [Stipulated] Final Judgment would become due and payable within 15 days of the asset
12 purchase.

13 **14. AUTHORITY TO ENTER FINAL JUDGMENT**

14 Each signatory to this Final Judgment certifies that he or she is fully authorized by the Party
15 he or she represents to enter into this Final Judgment, to execute it on behalf of the Party
16 represented and legally to bind that Party or Parties on whose behalf that individual is so signing.

17 **15. CONTINUING JURISDICTION & DISPUTE RESOLUTION**

18 **15.1** Pursuant to Code of Civil Procedure Section 664.6, the Court shall retain continuing
19 jurisdiction to enforce the terms of this Final Judgment and to address any other matters arising out
20 of this Final Judgment including any potential dispute among the Parties that may arise under the
21 provisions of this Final Judgment. The Court shall have the power to enforce this Final Judgment
22 with all available legal and equitable remedies, including contempt.

23 **15.2** Any Party may invoke the dispute resolution procedures of this Section by notifying
24 any other Party in writing of the matter(s) in dispute and of the disputing Party's proposal for
25 resolution. The Parties shall then meet and confer in good faith (either telephonically or in person)
26 within ten (10) days of the date of the notice to attempt to fully resolve the dispute no later than
27 thirty (30) calendar days from the date of the notice.

1 **15.3** If the Parties cannot resolve the dispute within thirty (30) days of the meet and confer
2 described in Paragraph 13.2, the Parties agree that the dispute may be submitted for formal
3 resolution by filing a motion before the Superior Court for the County of Placer.

4 **15.4** In resolving any dispute arising from this Final Judgment before the Court, the Parties
5 shall be entitled to seek fees and costs incurred.

6 **16. PAYMENT OF LITIGATION EXPENSES AND FEES**

7 The Parties shall pay their own attorney fees, expert witness fees and costs and all other
8 costs of litigation and investigation incurred to date.

9 **17. INTERPRETATION**

10 This Final Judgment was drafted equally by all Parties. The Parties agree that the rule of
11 construction holding that ambiguity is construed against the drafting party shall not apply to the
12 interpretation of this Final Judgment.

13 **18. COUNTERPART SIGNATURES**

14 This Final Judgment may be executed by the Parties in counterpart.

15 **19. ENTRY AFTER CONSIDERATION**

16 The Parties seek approval of this Final Judgment after consideration by the Court and have
17 requested that the Court decide that the Final Judgment is fair and in the public interest.

18 **20. INTEGRATION**

19 This Final Judgment constitutes the entire agreement between the Parties and may not be
20 amended or supplemented except as provided for in the Final Judgment. No oral representations
21 have been made or relied upon other than as expressly set forth herein.

22 **21. MODIFICATION OF FINAL JUDGMENT**

23 This Final Judgment may be modified only upon a noticed motion by one of the Parties with
24 approval of the Court, or upon written consent by all of the Parties and the approval of the Court.

25 **22. RECONVEYANCE OF DEED OF TRUST; SATISFACTION OF JUDGMENT**

26 Within fifteen (15) business days of the date on which Defendants complete payment of the civil
27 penalties described in Section 4.1 above, the People *ex rel.* PCAPCD & FRAQMD shall deliver to
28

1 Defendants: (a) a fully-executed and notarized reconveyance of the Deed of Trust in form and
2 substance reasonably satisfactory to Defendants, whom will provide the proposed language (b) a
3 fully-executed Acknowledgement of Satisfaction of Judgment with respect to this Final Judgment,
4 acknowledging full satisfaction of this Final Judgment and (c) a fully-executed Acknowledgement
5 of Satisfaction of Judgment, with respect to the Judgment by Confession acknowledging full
6 satisfaction of the Judgment by Confession, if and to the extent that the Judgment by Confession has
7 been filed with the Yuba County Superior Court. If the Judgment by Confession has not be filed
8 with the Yuba County Superior Court it shall be returned to Defendants for destruction within
9 fifteen (15) business days of completion of payments of the civil penalties hereunder.

10 **23. TERMINATION OF PERMANENT INJUNCTION**

11 After the Permanent Injunction has been in effect for five (5) years, and after the total amount
12 owed by Defendants under this Final Judgment has been paid in full, the injunction prescribed by
13 this Final Judgment in section 5 above shall terminate. Upon such termination, the injunctive
14 provisions under Paragraph 5 and 5.1 *I et seq.* shall have no prospective force or effect.

15
16
17 **Approved as to Form and Substance.**

18 Dated: 10/16/2020

AQUA TERRA AERIS LAW GROUP

19 By: 
20

Matthew C. Maclear
For Plaintiffs

21
22 Dated: 10/15/2020

HUGHEY PHILLIPS, LLP

23 By: 
24

Galen M. Gentry
For Defendants

25 **IT IS SO STIPULATED.**
26
27
28

1 Dated: _____

2 **PLACER COUNTY AIR POLLUTION CONTROL**
3 **DISTRICT**

4 By: _____
5 ADAM BAUGHMAN
6 Deputy Air Pollution Control Officer

7 **FEATHER RIVER AIR QUALITY MANAGEMENT**
8 **DISTRICT**

9 Dated: _____

10 By: _____
11 CHRISTOPHER BROWN
12 Air Pollution Control Officer

13 **FOR JAMES DAY; BARARA DAY, and MID VALLEY CONSULTING AND GENERAL**
14 **ENIGNEERING, a California Corporation.**

15 Dated: 10-15-2020

16 By: [Signature]
17 JAMES DAY

18 Dated: 10-15-2020

19 By: [Signature]
20 BARBARA DAY

21 DATED: 10-15-2020

22 By: [Signature]
23 MID VALLEY CONSULTING & GENERAL ENGINEERING
24 JAMES DAY, PRESIDENT/CEO

25 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

26 DATED: _____

27 By: _____
28 HON. CHARLES D. WACHOB
JUDGE OF THE SUPERIOR COURT

1 Dated:

10/15/2020

2 PLACER COUNTY AIR POLLUTION CONTROL
3 DISTRICT

4 By:

ADAM BAUGHMAN

Deputy Air Pollution Control Officer

6 FEATHER RIVER AIR QUALITY MANAGEMENT
7 DISTRICT

8 Dated:

9 By:

CHRISTOPHER BROWN

Air Pollution Control Officer

10 FOR JAMES DAY; BARARA DAY, and MID VALLEY CONSULTING AND GENERAL
11 ENGINEERING, a California Corporation.

12 Dated:

By:

JAMES DAY

13
14
15 Dated:

By:

BARBARA DAY

16
17
18 DATED:

By:

MID VALLEY CONSULTING & GENERAL ENGINEERING
JAMES DAY, PRESIDENT/CEO

19
20
21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22
23 DATED:

By:

HON. CHARLES D. WACHOB
JUDGE OF THE SUPERIOR COURT

1 Dated: _____

2 **PLACER COUNTY AIR POLLUTION CONTROL**
3 **DISTRICT**

4 By: _____

5 ADAM BAUGHMAN

6 Deputy Air Pollution Control Officer

7 **FEATHER RIVER AIR QUALITY MANAGEMENT**
8 **DISTRICT**

9 Dated: 10/15/20 _____

10 By: Christopher Brown

11 CHRISTOPHER BROWN

12 Air Pollution Control Officer

13 **FOR JAMES DAY; BARARA DAY, and MID VALLEY CONSULTING AND GENERAL**
14 **ENIGNEERING, a California Corporation.**

15 Dated: _____

16 By: _____

17 JAMES DAY

18 Dated: _____

19 By: _____

20 BARBARA DAY

21 DATED: _____

22 BY: _____

23 MID VALLEY CONSULTING & GENERAL ENGINEERING
24 JAMES DAY, PRESIDENT/CEO

25 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

26 DATED: _____

27 BY: _____

28 HON. CHARLES D. WACHOB

JUDGE OF THE SUPERIOR COURT

1 Dated: _____

2 **PLACER COUNTY AIR POLLUTION CONTROL**
3 **DISTRICT**

4 By: _____
5 ADAM BAUGHMAN
6 Deputy Air Pollution Control Officer

7 **FEATHER RIVER AIR QUALITY MANAGEMENT**
8 **DISTRICT**

9 Dated: 10/15/20 _____

10 By: Christopher Brown
11 CHRISTOPHER BROWN
12 Air Pollution Control Officer

13 **FOR JAMES DAY; BARARA DAY, and MID VALLEY CONSULTING AND GENERAL**
14 **ENIGNEERING, a California Corporation.**

15 Dated: _____

16 By: _____
17 JAMES DAY

18 Dated: _____

19 By: _____
20 BARBARA DAY

21 DATED: _____

22 By: _____
23 MID VALLEY CONSULTING & GENERAL ENGINEERING
24 JAMES DAY, PRESIDENT/CEO

25 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

26 DATED: 10-19-20 _____

27 By: Charles Wachob
28 HON. CHARLES D. WACHOB
JUDGE OF THE SUPERIOR COURT

Exhibit A
to
[Stipulated]
Final
Judgment

RECORDING REQUESTED BY AND

WHEN RECORDED, RETURN TO:

Matthew C. Maclear
AQUA TERRA AERIS LAW GROUP
4030 Martin Luther King Jr. Way
Oakland, CA 94609

APN: 020-410-011

[SPACE ABOVE FOR RECORDER'S USE ONLY]

DEED OF TRUST AND ASSIGNMENT OF RENTS

This Deed of Trust, made this 15th day of October 2020, between JAMES DAY, a natural person, and BARBARA DAY, a natural person, as joint tenants, whose address is 1097 Bronco Drive, Plumas Lake, Yuba County, State of California (hereinafter referred to as "Trustor"), on the one hand, and Placer County Air Pollution Control District and Feather River Air Quality Management District, whose addresses are, respectively, 110 Maple St., Auburn, California, 95603 (PCAPCD) and 541 Washington Ave. Yuba City, California 95991, (hereinafter collectively to as "Trustee" and "Beneficiary").

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE that certain property located in the County of Yuba, State of California, commonly known as 831 N. Beale Rd., Marysville, California, 95901, and more particularly described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR FULL LEGAL DESCRIPTION

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions herein to collect and apply such rents, issues and profits.

For the Purpose of Securing:

(1) Performance of each agreement of Trustor incorporated by reference or contained herein.

(2) Payment of the indebtedness evidenced by the Stipulated Final Judgment, the Judgment by Confession, and the Writ of Execution entered by the Placer County Superior Court in or around October 2020, and resolving litigation between the Trustor and the Trustee, in the principal sum of Two Hundred and Fifty Thousand U.S. Dollars (\$250,000.00).

(3) Payment of such further sums as the then record owner of said property may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

To Protect the Security of This Deed of Trust, Trustor Agrees:

(1) To keep said property in good condition and repair, not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof, not to commit, suffer or permit any act upon said property in violations of law to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary or Trustee to foreclose this Deed or act upon a Judgment by Confession or Writ of Execution entered between Trustor and Trustee/Beneficiary.

(4) To pay at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto, all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto, and in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary/Trustee does not waive his rights either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary/Trustee and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may reconvey any part of said property, consent to the making of any map or plot thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Trustee/Beneficiary state that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "The person or persons legally entitled thereto" Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, Trustor hereby give to and confers upon Beneficiary/Trustee the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees. Upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder. Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public

auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof, all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the debt evidenced by the Stipulated Final Judgment, the Judgment by Confession, and the Writ of Execution entered by the Placer County Superior Court in or around October 2020 secured hereby whether or not named as Beneficiary herein in this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

(15) In the event that Trustor elects to sell the Property, re-finance the Property, or otherwise encumber the Property, the entire outstanding amount of the indebtedness secured by this Deed shall be repaid in full before this Deed may be released from the Property.

(16) Trustor shall provide thirty (30) days' advance written notice to Trustee prior to the refinance, sale, or further encumbrance of the Property.

(17) This Deed is expressly subject to the terms of the of Stipulated Final Judgment, the Judgment by Confession, and the Writ of Execution entered by the Placer County Superior Court in or around October 2020, and resolving the litigation between JAMES DAY, BARBARA DAY, and MID VALLEY CONSULTING AND GENERAL ENGINEERING.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

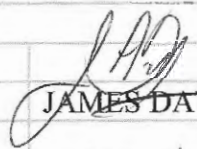
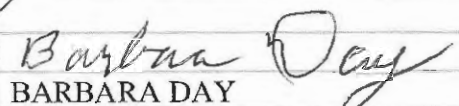
| | | | |
|-------|------------|-----------|---|
| | | TRUSTORS: | |
| Date: | 10-16-2020 | By: |  JAMES DAY |
| Date: | 10-16-2020 | By: |  BARBARA DAY |

EXHIBIT A: FULL LEGAL DESCRIPTION

The land described herein is commonly known as 831 N. Beale Rd., Marysville, California, 95901, has an **Assessor's Parcel Number of 020-410-011**, and is situated in the State of California, County of Yuba, unincorporated area, and is described as follows:

Parcel 1:

A parcel of land located in the Westerly corner of Tract 10, as shown on the map entitled, "Subdivision of Yuba Gardens", filed in the office of the County Recorder of the County of Yuba, State of California, in Book 3 of Maps, at Page 2, and more particularly described as follows:

Beginning at the Northwest corner of that certain parcel of land acquired by J.W. Shepherd by deed recorded July 2, 1937, in Book 40, at Page 153, Official Records of Yuba County; thence from said point of beginning along the base line of "Morrison Grade" or levee, North $89^{\circ} 44'$ West, 160.00 feet; thence leaving said Base Line Easterly to a point on the Northwesterly line of said parcel of land; thence along said North westerly line, North $28^{\circ} 45'$ East, 50.00 feet to the point of beginning.

Parcel 2:

A portion of that certain parcel of land in Tract 10, as said Tract is shown on the map entitled, "Yuba Gardens", filed in the office of the County Recorder of the County of Yuba, State of California, in Book 3 of Maps, at Page 2, as acquired by the State of California from the Heirs of J.W. Shepherd by deed dated November 24, 1958, recorded February 6, 1959, in Book 269, at Page 398, Official Records of Yuba County.

Said portion is all that part thereof lying Northerly of the following described line:

Beginning at a point from which the Southwest corner of Section 29, Township 15 North, Range 4 East, M.D.B. & M., bears South $47^{\circ} 10' 37''$ East 8853.13 feet, said point also being 355.73 feet Northeasterly measured at right angles from the Base Line at Engineer's Station "B" 476+59.57 P.O.T. of the Department of Public Works' 1951 Survey from 3/4 mile North of Ostrom to Marysville, Road III-Yub-3-B; thence from said point of beginning South $28^{\circ} 22' 21''$ West, 171.75 feet; thence North $69^{\circ} 42' 46''$ West, 249.78 feet; thence North $41^{\circ} 10' 40''$ West, 182.63 feet to a point that is 142.10 feet Northerly, measured radially from the "B4" line at Engineer's Station "B4" 480+49.64 of the aforesaid survey.

EXCEPTING FROM PARCELS 1 AND 2 ABOVE all that portion condemned to Three Rivers Levee Improvement Authority, in Final Order of Condemnation, recorded January 27, 2015, as Instrument No. 2015-000915, Official Records.

APN: 020-410-011

Trustors' initials:

JAMES DAY: JD DATE: 10-16-2020

BARBARA DAY: BD DATE: 10-16-2020

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Sutter

On October 16, 2020 before me, Heather A. Keller, Notary Public
(insert name and title of the officer)

personally appeared James Day and Barbara Day,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Heather Keller (Seal)



Attached to: Deed of Trust and Assignment of Rents
dated: October 16, 2020

Exhibit B
to
[Stipulated]
Final
Judgment

MATTHEW C. MACLEAR, SBN 209228
4030 Martin Luther King Jr. Way
Oakland, CA 94609
Telephone: (415) 568-5200
e-mail: mcm@atalawgroup.com

Attorneys for the Plaintiffs

*The People of the State of California ex rel.
Placer County Air Pollution Air Control District
Feather River Air Quality Management District*

**CALIFORNIA SUPERIOR COURT
COUNTY OF YUBA**

**PEOPLE FOR THE STATE OF
CALIFORNIA, *ex rel.* PLACER COUNTY
AIR POLLUTION CONTROL DISTRICT
and FEATHER RIVER AIR QUALITY
MANAGEMENT DISTRICT,**

Plaintiffs,

vs.

**JAMES DAY, individually; BARBARA DAY,
individually, MID VALLEY CONSULTING &
GENERAL ENGINEERING, a California
corporation; and DOES 1-10, inclusive,**

Defendants.

Case No.:

**STIPULATION FOR ENTRY OF WRIT
OF EXECUTION**

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA *ex rel.* PLACER COUNTY
AIR POLLUTION CONTROL DISTRICT and FEATHER RIVER AIR QUALITY
MANAGEMENT DISTRICT (collectively “the People”), through its attorney, Matthew C. Maclear
of Aqua Terra Aeris Law Group, and Defendants, JAMES DAY, BARBARA DAY, and MID
VALLEY CONSULTING AND GENERAL ENGINEERING through its attorney, Galen Gentry of
Hughey Phillips, LLP (collectively “Defendants”), hereby stipulate as follows:

1 1. The proposed Writ of Execution, a copy of which is attached hereto as **Exhibit A**
2 and incorporated by this reference, may be entered as set forth herein, without the taking of proof
3 and without trial or adjudication of any issue of law, but with the admissions contained herein.

4 2. Defendants acknowledge that the Superior Court of the State of California, County
5 of Yuba, has jurisdiction of the subject matter hereto, and has personal jurisdiction over
6 Defendants.

7 3. Counsel for Defendants has the authority to enter into this stipulation and to bind
8 the Defendants accordingly.


9 4. Prior to the filing of this proceeding, following confidential discussions, the Parties
10 agreed to the resolution set forth in the Writ of Execution, as well as the Judgment by Confession
11 filed concurrently herewith and attached as **Exhibit B**, and the Final Judgment filed in the
12 Superior Court of the County of Placer, attached hereto as **Exhibit C** (hereafter “the Final
13 Judgment”).

14 5. The Parties enter into this Stipulation for Writ of Execution pursuant to an
15 agreement to settle the claims, as set forth in the Final Judgment, and for the purpose of furthering
16 public interests, environmental protection, and the interests of justice. The Parties stipulate and
17 consent to the entry of this Writ of Execution prior to the taking of any proof, and without trial or
18 adjudication of any fact or law relevant hereto.

19 6. The Parties agree that this Stipulation for Writ of Execution is expressly subject to
20 the terms and provisions of the Final Judgment.

21 Dated: 10/16/2020

Aqua Terra Aeris Law Group

23 By: 
24 Matthew C. Maclear
25 For Plaintiffs

26 Dated: 10/15/2020

Hughey Phillips, LLP

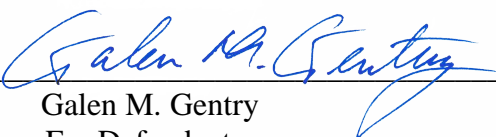
27 By: 
28 Galen M. Gentry
For Defendants

EXHIBIT A
to Writ of
Execution

| | |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 209228 NAME: Matthew C. Maclear FIRM NAME: Aqua Terra Aeris Law Group STREET ADDRESS: 4030 Martin Luther King Jr. Way CITY: Oakland STATE: CA ZIP CODE: 94609 TELEPHONE NO.: (415) 568-5200 FAX NO.: EMAIL ADDRESS: mcm@atalawgroup.com ATTORNEY FOR (name): People of the State of California ex rel. PCAPCD & FRAQMD <input type="checkbox"/> ATTORNEY FOR <input checked="" type="checkbox"/> ORIGINAL JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF YUBA STREET ADDRESS: 215 Fifth Street, Suite 200 MAILING ADDRESS: CITY AND ZIP CODE: Marysville, CA 95901 BRANCH NAME: Civil | CASE NUMBER: |
| PLAINTIFF/PETITIONER: The People of the State of California ex rel. PCAPCD & FRAQMD DEFENDANT/RESPONDENT: James Day, Barbara Day, Mid Valley Consulting & Gen. Eng | <input type="checkbox"/> Limited Civil Case (including Small Claims) <input checked="" type="checkbox"/> Unlimited Civil Case (including Family and Probate) |
| <input checked="" type="checkbox"/> EXECUTION (Money Judgment) WRIT OF <input type="checkbox"/> POSSESSION OF <input type="checkbox"/> Personal Property <input type="checkbox"/> SALE <input type="checkbox"/> Real Property | |

1. **To the Sheriff or Marshal of the County of:** YUBA

You are directed to enforce the judgment described below with daily interest and your costs as provided by law.

2. **To any registered process server:** You are authorized to serve this writ only in accordance with CCP 699.080 or CCP 715.040.

3. (Name): THE PEOPLE OF THE STATE OF CALIFORNIA ex rel. PCAPCD and FRAQMD

is the ☒ original judgment creditor ☐ assignee of record whose address is shown on this form above the court's name.

4. **Judgment debtor** (name, type of legal entity if not a natural person, and last known address):

James Day:
1097 Bronco Drive,
Plumas Lake, CA 95961

9. ☒ Writ of Possession/Writ of Sale information on next page.

10. ☐ This writ is issued on a sister-state judgment.

For items 11–17, see form MC-012 and form MC-013-INFO.

11. Total judgment (as entered or renewed) \$ 250,000.00

12. Costs after judgment (CCP 685.090) \$ 0.00

13. Subtotal (add 11 and 12) \$ 250,000.00

14. Credits to principal (after credit to interest) \$

15. Principal remaining due (subtract 14 from 13) \$ 250,000.00

16. Accrued interest remaining due per CCP 685.050(b) (not on GC 6103.5 fees) \$ 0.00

17. Fee for issuance of writ (per GC 70626(a)(I)) \$ 0.00

18. **Total amount due** (add 15, 16, and 17) \$ 250,000.00

19. **Levying officer:**

a. Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) \$ 0.00

b. Pay directly to court costs included in 11 and 17 (GC 6103.5, 68637; CCP 699.520(j)) \$ 0.00

20. ☐ The amounts called for in items 11–19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

5. **Judgment entered** on (date):

(See type of judgment in item 22.)

6. ☐ Judgment renewed on (dates):

7. **Notice of sale** under this writ:

a. ☒ has not been requested.

b. ☐ has been requested (see next page).

8. ☒ Joint debtor information on next page.

[SEAL]

Date: _____ Clerk, by _____, Deputy

NOTICE TO PERSON SERVED: SEE PAGE 3 FOR IMPORTANT INFORMATION.

Page 1 of 3

Plaintiff/Petitioner: The People of the State of California ex rel. PCAPCD & FRAQMD
 Defendant/Respondent: James Day, Barbara Day, Mid Valley Consulting & Gen. Eng.

CASE NUMBER:

21. ☒ Additional judgment debtor(s) (name, type of legal entity if not a natural person, and last known address):

Barbara Day,
 1097 Bronco Drive
 Plumas Lake, CA 95961

Mid Valley Consulting and General Engineering,
 a California Corporation
 1097 Bronco Drive
 Plumas Lake, CA 95961

22. The judgment is for (check one):

- a. ☐ wages owed.
 b. ☐ child support or spousal support.
 c. ☒ other. Money Judgment for Civil Penalties

23. ☐ Notice of sale has been requested by (name and address):

| | | | |
|--|--|--|--|
| | | | |
| | | | |

24. ☐ Joint debtor was declared bound by the judgment (CCP 989-994)

- | | |
|--|--|
| a. on (date): | a. on (date): |
| b. name, type of legal entity if not a natural person, and last known address of joint debtor: | b. name, type of legal entity if not a natural person, and last known address of joint debtor: |

| | | | |
|--|--|--|--|
| | | | |
| | | | |

- c. ☐ Additional costs against certain joint debtors are itemized: ☐ below ☐ on Attachment 24c.

25. ☐ (Writ of Possession or Writ of Sale) **Judgment** was entered for the following:

- a. ☐ Possession of real property: The complaint was filed on (date):
 (Check (1) or (2). Check (3) if applicable. Complete (4) if (2) or (3) have been checked.)
- (1) ☐ The *Prejudgment Claim of Right to Possession* was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.
- (2) ☐ The *Prejudgment Claim of Right to Possession* was NOT served in compliance with CCP 415.46.
- (3) ☐ The unlawful detainer resulted from a foreclosure sale of a rental housing unit. (An occupant not named in the judgment may file a *Claim of Right to Possession* at any time up to and including the time the levying officer returns to effect eviction, regardless of whether a *Prejudgment Claim of Right to Possession* was served.) (See CCP 415.46 and 1174.3(a)(2).)
- (4) If the unlawful detainer resulted from a foreclosure (item 25a(3)), or if the *Prejudgment Claim of Right to Possession* was not served in compliance with CCP 415.46 (item 25a(2)), answer the following:
- (a) The daily rental value on the date the complaint was filed was \$
- (b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify):

Item 25 continued on next page

Plaintiff/Petitioner: The People of the State of California ex rel. PCAPCD & FRAQMD
 Defendant/Respondent: James Day, Barbara Day, Mid Valley Consulting & Gen. Eng.

CASE NUMBER:

25. b. ☐ Possession of personal property.
 ☐ If delivery cannot be had, then for the value (*itemize in 25e*) specified in the judgment or supplemental order.
- c. ☐ Sale of personal property.
- d. ☐ Sale of real property.
- e. The property is described ☐ below ☐ on Attachment 25e.

NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will demand that you turn over the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED. If the residential property that you are renting was sold in a foreclosure, you have additional time before you must vacate the premises. If you have a lease for a fixed term, such as for a year, you may remain in the property until the term is up. If you have a periodic lease or tenancy, such as from month-to-month, you may remain in the property for 90 days after receiving a notice to quit. A blank form *Claim of Right to Possession and Notice of Hearing* (form CP10) accompanies this writ. You may claim your right to remain on the property by filling it out and giving it to the sheriff or levying officer.

EXCEPTION IF YOU WERE NOT SERVED WITH A FORM CALLED PREJUDGMENT CLAIM OF RIGHT TO POSSESSION. If you were not named in the judgment for possession and you occupied the premises on the date on which the unlawful detainer case was filed, you may object to the enforcement of the judgment against you. You must complete the form *Claim of Right to Possession and Notice of Hearing* (form CP10) and give it to the sheriff or levying officer. A blank form accompanies this writ. You have this right whether or not the property you are renting was sold in a foreclosure.

EXHIBIT B
to Writ of
Execution

MATTHEW C. MACLEAR, SBN 209228
4030 Martin Luther King Jr. Way
Oakland, CA 94609
Telephone: (415) 568-5200
e-mail: mcm@atalawgroup.com

Attorneys for the Plaintiffs

*The People of the State of California ex rel.
Placer County Air Pollution Air Control District
Feather River Air Quality Management District*

**CALIFORNIA SUPERIOR COURT
COUNTY OF YUBA**

**PEOPLE FOR THE STATE OF
CALIFORNIA, *ex rel.* PLACER COUNTY
AIR POLLUTION CONTROL DISTRICT
and FEATHER RIVER AIR QUALITY
MANAGEMENT DISTRICT,**

Plaintiffs,

vs.

**JAMES DAY, individually; BARBARA DAY,
individually, MID VALLEY CONSULTING &
GENERAL ENGINEERING, a California
corporation; and DOES 1-10, inclusive,**

Defendants.

Case No.:

**JUDGMENT BY CONFESSION
C.C.P. §§ 1132-1134**

1 The PEOPLE OF THE STATE OF CALIFORNIA *ex rel.* PLACER COUNTY AIR
2 POLLUTION CONTROL DISTRICT and FEATHER RIVER AIR QUALITY MANAGEMENT
3 DISTRICT (“People *ex rel.* PCAPCD & FRAQMD” or “the People”) and Defendants JAMES
4 DAY, BARBARA DAY, and MID VALLEY CONSULTING AND GENERAL ENGINEERING.,
5 a California Corporation (collectively, “Defendants”) and their attorneys of record stipulate and
6 agree, as follows:
7

8 1. The People shall have judgment without the taking of proof and without a trial and
9 adjudication of any factual or legal issues, on the basis of an *ex parte* application or other
10 submittal/filing with the Clerk of the Court, as no noticed motion is required under the terms of the
11 agreement between the People and Defendants. The [Stipulated] Final Judgment, attached to the
12 Declaration of Attorney for Defendants In Support of the Judgment by Confession at **Exhibit A**,
13 enumerates the rights and liabilities of the People and Defendants and is incorporated herein by
14 reference as though fully set forth.

15 2. The People acknowledge and agree that this Judgment by Confession is identical in all
16 respects to the [Stipulated] Final Judgment as it arises from exactly the same factual circumstances
17 and legal theories and does not impose any additional liability or obligation upon Defendants. The
18 People acknowledge and agree that the [Stipulated] Final Judgment was entered into in order to
19 settle disputed claims and that the [Stipulated] Final Judgment is neither an admission nor denial by
20 Defendants of any issue of law or fact or any violation of law.
21

22 3. The Court will enter judgment in this action, pursuant to the accompanying
23 [Stipulated] Final Judgment and on filing with the Clerk of the Court or on an *ex parte* request by the
24 People without a noticed motion to Defendants as set forth in the [Stipulated] Final Judgment entered
25 into between the parties.

26 a. Specifically, the terms and conditions for Entry of Judgment are found in
27 Sections 4 (“Payments and Civil Penalties”), 5 (“Injunctive Relief”), and 6 (“Material Breach”),
28 including all subsections thereto, of the [Stipulated] Final Judgment, filed concurrently herewith.

b. The identification of claims and actions covered and reserved by the Final Judgment are found in Sections 2 ("Settlement of Disputed Claims") and 7 ("Matters Covered by This Final Judgment"), including all subsections thereto, of the [Stipulated] Final Judgment.

c. Other terms relevant to the Entry of Final Judgment are found in Sections 3 ("Definitions"), 4 ("Waver of Claims"), 9 ("Effect of Final Judgment"), 13 ("Application of Final Judgment"), 14 ("Authority to Enter Final Judgment"), 17 ("Interpretation"), and 19 ("Entry After Consideration"), and including all subsections thereto.

3. On entry, this Judgment by Confession will become final and execution may be levied on it immediately.

4. Any amounts paid toward the [Stipulated] Final Judgment shall also be credited against this Judgment by Confession and full satisfaction of the [Stipulated] Final Judgment shall be deemed conclusive evidence that this Judgment by Confession has also been fully satisfied.

MID VALLEY CONSULTING AND GENERAL ENGINEERING

Date: 10-14-2020

Signature: [Signature]

Printed Name: JAMES A DAY
President/CEO

JAMES DAY

Date: 10-14-2020

Signature: [Signature]

Printed Name: JAMES A DAY

BARBARA DAY

Date: 10-15-2020

Signature: [Signature]

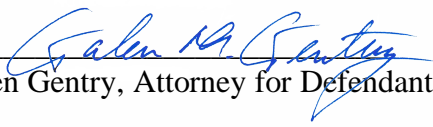
Printed Name: Barbara DAY

1 **APPROVED AS TO FORM BY COUNSEL FOR DEFENDANTS:**

2 Pursuant to California Civil Code of Procedure Section 1132, counsel certifies he/she has examined
3 the proposed judgment and has advised DEFENDANTS with respect to the waiver of rights and
4 defenses under the confession of judgment procedure and has advised DEFENDANTS to utilize the
confession by judgment procedure.

5 HUGHEY PHILLIPS

6 Date: 10/15/2020

7 Signature: 
8 Galen Gentry, Attorney for Defendants

9 **STIPULATED TO BY:**

10 PLACER COUNTY AIR POLLUTION CONTROL DISTRICT

11 Date: _____

12 Signature: _____
13 Erik White, Air Pollution Control Officer

14
15 FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

16 Date: _____

17 Signature: _____
18 Christopher Brown, Air Pollution Control Officer

19 **APPROVED AS TO FORM BY COUNSEL FOR THE PEOPLE ex rel. PCAPCD AND**
20 **FRAQMD:**

21 AQUA TERRA AERIS LAW GROUP

22 Date: _____

23 Signature: _____
24 Matthew C. Maclear, Attorney for Plaintiffs

1 **APPROVED AS TO FORM BY COUNSEL FOR DEFENDANTS:**

2 Pursuant to California Civil Code of Procedure Section 1132, counsel certifies he/she has examined
3 the proposed judgment and has advised DEFENDANTS with respect to the waiver of rights and
4 defenses under the confession of judgment procedure and has advised DEFENDANTS to utilize the
confession by judgment procedure.

5 HUGHEY PHILLIPS

6 Date: _____

7 Signature: _____
Galen Gentry, Attorney for Defendants

8
9 **STIPULATED TO BY:**

10 PLACER COUNTY AIR POLLUTION CONTROL DISTRICT

11 Date: 10/15/2020

12 Signature: 
13 Erik White, Air Pollution Control Officer

14
15 FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

16 Date: _____

17 Signature: _____
18 Christopher Brown, Air Pollution Control Officer

19 **APPROVED AS TO FORM BY COUNSEL FOR THE PEOPLE ex rel. PCAPCD AND**
20 **FRAQMD:**

21 AQUA TERRA AERIS LAW GROUP

22 Date: _____

23 Signature: _____
24 Matthew C. Maclear, Attorney for Plaintiffs

1 **APPROVED AS TO FORM BY COUNSEL FOR DEFENDANTS:**

2 Pursuant to California Civil Code of Procedure Section 1132, counsel certifies he/she has examined
3 the proposed judgment and has advised DEFENDANTS with respect to the waiver of rights and
4 defenses under the confession of judgment procedure and has advised DEFENDANTS to utilize the
confession by judgment procedure.

5 HUGHEY PHILLIPS

6 Date: _____

7 Signature: _____
Galen Gentry, Attorney for Defendants

8
9 **STIPULATED TO BY:**

10 PLACER COUNTY AIR POLLUTION CONTROL DISTRICT

11 Date: _____

12 Signature: _____
13 Erik White, Air Pollution Control Officer

14
15 FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

16 Date: 10/15/20

17 Signature: Christopher Brown
18 Christopher Brown, Air Pollution Control Officer

19 **APPROVED AS TO FORM BY COUNSEL FOR THE PEOPLE ex rel. PCAPCD AND**
20 **FRAQMD:**

21 AQUA TERRA AERIS LAW GROUP

22 Date: 10/16/2020

23 Signature: 
24 Matthew C. Maclear, Attorney for Plaintiffs

EXHIBIT C
to Writ of
Execution

MATTHEW C. MACLEAR, SBN 209228
4030 Martin Luther King Jr. Way
Oakland, CA 94609
Telephone: (415) 568-5200
e-mail: mcm@atalawgroup.com

Attorneys for the Plaintiffs

*The People of the State of California ex rel.
Placer County Air Pollution Air Control District
Feather River Air Quality Management District*

**CALIFORNIA SUPERIOR COURT
COUNTY OF PLACER**

**PEOPLE FOR THE STATE OF
CALIFORNIA, *ex rel.* PLACER COUNTY
AIR POLLUTION CONTROL DISTRICT
and FEATHER RIVER AIR QUALITY
MANAGEMENT DISTRICT,**

Plaintiffs,

vs.

**JAMES DAY, individually; BARBARA DAY,
individually, MID VALLEY CONSULTING &
GENERAL ENGINEERING, a California
corporation; and DOES 1-10, inclusive,**

Defendants.

Case No.: SCV-0043170

**[STIPULATED] FINAL JUDGMENT
AND PERMANENT INJUNCTION**

**DATE: 10/19/20
TIME: 8:30 am
DEPT: 42**

Trial Date: 9/29/2020

1 This Stipulated Judgment and Permanent Injunction (“Final Judgment”) is entered into by
2 Plaintiff, the People of the State of California *ex rel.* Placer County Air Pollution Control District and
3 Feather River Air Quality Management District (“People *ex rel.* PCAPCD & FRAQMD”; “the
4 People”; or “the Plaintiff Air Districts”) and Defendants JAMES DAY, BARBARA DAY, and MID
5 VALLEY CONSULTING AND GENERAL ENGINEERING., a California Corporation
6 (collectively, “Defendants”). For the purposes of this Final Judgment, the People and the Defendants
7 shall be referred to collectively as “Parties” and individually as “Party.” Both Parties have stipulated
8 and consented to the entry of this Final Judgment. The Parties have agreed to settle the
9 above-captioned matter without further litigation, as set forth below.

10 INTRODUCTION

11 This action was filed on July 24, 2019 by the People *ex rel.* PCAPCD & FRAQMD regarding
12 Defendants’ compliance with state laws and regulations governing air pollution in their provision of
13 air quality testing, construction, maintenance, and repair services at six (6) primary gas dispensing
14 facilities (“GDF”) within the respective jurisdictions of Placer County Air Pollution Control District
15 (“PCAPCD”) and Feather River Air Quality Management District (“FRAQMD”).¹ As set forth in the
16 Complaint, the People allege that Defendants violated Chapter 4 of Division 26 of the California Health
17 & Safety Code sections 42402.4, 42402.3(a), 42402.2(a), 42402.1(a), 42402(b)(1), 42402(a), 41954(f),
18 41960.2(a)-(b), 42303.5; regulations promulgated under this chapter, including California Code of
19 Regulations, title 23, sections 2715(e) and 2611; California Air Resources Board Executive Orders VR-
20 202-X and VR-204-W and/or earlier iterations of these Orders; as well as PCAPCD Rule 214 Sec. 301,
21 PCAPCD Rule 214 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules
22 3.8.E.1 and 3.13.

23
24
25 ¹ Those six stations are: Hira’s Beacon, 510 Washington Blvd., Roseville, CA 95678 (“Hira’s Beacon”);
26 Arco AM/PM Riverside, 998 Riverside Road, Roseville, CA 95678 (“Riverside Arco”); Rowdy
27 Randy’s, 650 High Street, Auburn, California, 95603 (“Rowdy Randy’s”); Arco AM/PM, 13405
28 Lincoln Way, Auburn, CA 95603; Washington Minimart, 999 Washington Blvd., Roseville, California
95678 (“Washington Minimart”); and 5th Street Gas Station, 929 5th Street, Marysville, CA 95901 (“5th
Street Gas”).

1 Since the filing of the Complaint, representatives of the People *ex rel.* PCAPCD & FRAQMD
2 and Defendants have engaged in settlement discussions. In these negotiations, the People were
3 represented by Aqua Terra Aeris Law Group, and enforcement counsel for PCAPCD and
4 FRAQMD, by and through Matthew C. Maclear, Erica A. Maharg, and James T. Brett. Defendants
5 were represented by the Hughey Phillips, LLP, by and through Galen Gentry and Noah Phillips.
6 The Parties have now agreed to settle this matter without further litigation pursuant to the terms of
7 this Final Judgment for purposes of furthering the public interest.

8 **FINAL JUDGMENT AND PERMANENT INJUNCTION**

9 The Parties, after opportunity for review by counsel, hereby stipulate and consent to the entry
10 of the Final Judgment as set forth below.

11 **1. JURISDICTION**

12 The Parties stipulate and agree that the Superior Court of California, County of Placer has
13 subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the
14 Parties to this Final Judgment.

15 **2. SETTLEMENT OF DISPUTED CLAIMS**

16 This Final Judgment is neither an admission nor denial by Defendants regarding any issue of
17 law or fact in the above-captioned matter or any violation of law. The Parties enter into this Final
18 Judgment pursuant to a compromise and settlement of disputed claims for purposes of furthering the
19 public interest. The People *ex rel.* PCAPCD & FRAQMD believe that the resolution embodied in
20 this Final Judgment is fair and reasonable and fulfills the People's enforcement objectives; that
21 except as provided in this Final Judgment, no further action is warranted concerning the allegations
22 contained in the Complaint; and that entry of this Final Judgment is in the best interest of the public.
23 Defendants agree that this Final Judgment is a fair and reasonable resolution of the matters alleged
24 in the Complaint. The Parties also waive their separate, independent and individual rights to appeal.

25 **3. DEFINITIONS**

26 Except where otherwise expressly defined in this Final Judgment, all terms shall be
27 interpreted consistent with Chapter 4 of Division 26 of the California Health & Safety Code
28

1 sections; the regulations promulgated under this chapter, including California Code of Regulations,
2 title 23, sections 2715(e) and 2611; California Air Resources Board Executive Orders VR-202-X and
3 VR-204-W; as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214 Sec. 303, PCAPCD Rule 214
4 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13.

5 **4. PAYMENTS AND CIVIL PENALTIES**

6 Upon Entry of this [Stipulated] Final Judgment², Defendants shall pay civil penalties to the
7 Treasurer of Placer County Air Pollution Control District in the amount and manner described
8 below. Defendants, and each of them, are jointly and severally liable for the payment of penalties in
9 this action.

10 **4.1 Civil Penalties**

11 Defendants shall be liable for the total amount of Two-Hundred and Fifty Thousand Dollars
12 (\$250,000), pursuant to section 42405 of the California Health and Safety Code, as a civil penalty
13 by wire transfer or certified funds. Of this civil penalty, at least FIFTY THOUSAND DOLLARS
14 (\$50,000) shall be paid by Defendants within ninety (90) days of Entry of Final Judgment on
15 counsel for Defendants. The remaining TWO HUNDRED THOUSAND DOLLARS (\$200,000)
16 shall be paid by Defendants in equal monthly installments of Three Thousand Three Hundred and
17 Thirty Three Dollars (\$3,333) for a period of sixty (60) months, with the first of those monthly
18 payments beginning on the first day of the month immediately following Defendants' initial
19 payment of at least Fifty Thousand Dollars (\$50,000).

20 The amount owed by Defendants under the Final Judgment will be secured by a Deed of
21 Trust, attached hereto as **Exhibit A** (hereafter "the Deed of Trust") on the property owned by
22 Defendants JAMES DAY and BARBARA DAY located in Yuba County and commonly known as
23 831 N. Beale Rd., Marysville, CA 95901 (hereafter "the North Beale Property"). The Parties have
24 stipulated to a Writ of Execution for the sale of the North Beale Property via a Judgment by
25 Confession pursuant to California Code of Civil Procedure sections 1132 and 1133, provided, that,
26

27
28 ² Entry of Final Judgment is the date on which the Court files the [Stipulated] Final Judgment under Placer County
Superior Court No. SCV-0043170

1 the People *ex rel.* PCAPCD & FRAQMD shall not file the Judgment by Confession with the Yuba
2 County Superior Court and shall not levy upon the North Beale Property pursuant to the Stipulated
3 Writ of Execution unless any Defendant has committed a Material Breach (as such term is defined
4 in Section 6 below) of this Stipulated Final Judgment. The Stipulated Writ of Execution and
5 Judgment by Confession are attached hereto as **Exhibits B** and **C**, respectively. Defendants agree
6 to not voluntarily encumber the North Beale Property for five (5) years, or until the total amount
7 owed under the Final Judgment is paid. If Defendants refinance the existing mortgage on the North
8 Beale Property, elect to sell the North Beale Property, or otherwise enter into further voluntary
9 encumbrances³ of the property within five (5) years of entry of Final Judgment, and/or prior to the
10 payment of the whole amount owed by Defendants under the Final Judgment, the entire remaining
11 balance owed by Defendants will become due and payable immediately, and at that time the People
12 may exercise their rights under the Deed of Trust and/or the Judgment by Confession and Stipulated
13 Writ of Execution. In the event of any involuntary encumbrance of the North Beale Property (i.e.
14 the filing of a tax lien), Defendants shall give Plaintiff notice in writing, and PCAPCD and/or
15 FRAQMD shall provide Defendants with sixty (60) days' notice and opportunity to obtain the
16 removal of any such involuntary encumbrance. If any involuntary encumbrance is not removed
17 within sixty (60) days, it will be treated the same as a voluntary encumbrance.

18 Defendants shall provide thirty (30) days' advance written notice to PCAPCD & FRAQMD
19 prior to the refinance, sale, or further voluntary encumbrance of the North Beale Property.
20 Defendants shall obtain an agreement from any title company involved with the sale or refinance of
21 the North Beale Property to distribute the remaining penalty balance to PCAPCD & FRAQMD at
22 the time of refinance, sale, or encumbrance of the North Beale Property if within five (5) years of
23 the Entry of Final Judgment or prior to payment of the entire amount due under the Final Judgment.
24 Within sixty (60) days of Entry of Final Judgment, Defendants shall enter into a litigation guarantee
25 for the North Beale Property and will provide notice thereof to senior lien holders; failure to secure
26

27
28 ³ Encumbrance is defined as including, but not limited to, any mortgage, deed of trust, judgment lien, tax lien, option to
sale, sale or division of ownership interest, declaration of homestead or transfer of any portion of the real property.

1 a litigation guarantee and provide notice to senior lien holders within sixty (60) days of Entry of
2 Final Judgment shall constitute a material breach of the terms of this Final Judgment.

3 The People agree to refrain from recording abstracts of judgment against the properties
4 owned by Defendants JAMES DAY and BARBARA DAY, commonly known as 1097 Bronco
5 Drive, Plumas Lake, CA 95961 and 2551 Plumas Arboga Road, Olivehurst, California 95691 unless
6 and until there has been a Material Breach, defined below, by Defendants of the terms of the Final
7 Judgment, including but not limited to breaches of injunctive, notice, and payment terms. Upon
8 such Material Breach, if within five (5) years of the Entry of Final Judgment and prior to full
9 payment of the full amount owed under this Final Judgment, the People are entitled to record
10 abstracts of judgment against the real properties owned by Defendants JAMES DAY and
11 BARBARA DAY, including but not limited to those located at 1097 Bronco Drive, Plumas Lake,
12 CA 95961 and 2551 Plumas Arboga Road, Olivehurst, California 95691. In the event of any
13 Material Breach by any Defendant of their notice, injunctive or payment obligations hereunder, the
14 People agree to first seek recovery of any remaining unpaid civil penalty balance from (a) levy of
15 the North Beale Property pursuant to the Judgment by Confession and Stipulated Writ of Execution,
16 and/or (b) nonjudicial foreclosure of the Deed of Trust recorded against the North Beale Property.
17 If the People seek to recover any unpaid penalty balance hereunder through both the Stipulated Writ
18 of Execution and the Deed of Trust, the People acknowledge and agree that they shall only be
19 entitled to a single recovery of the aggregate unpaid civil penalty balance from the proceeds of sale
20 of the North Beale Property.

21 Defendants agree to reimburse the People for all costs and fees incurred as a result of
22 presenting Judgment by Confession, Writ of Execution and levy for the North Beale Property and/or
23 for nonjudicial foreclosure of the Deed of Trust.

24 **4.2 Form and Delivery of Payment**

25 Defendants shall timely submit to the office of the Placer County Air Pollution Control
26 District the payment in certified funds or via a wire transfer made payable to the Treasurer of the
27 Placer County Air Pollution Control District.
28

1 Payment shall be deemed timely if post-marked by the United States Postal Service by the
2 date that such payment is due, or upon delivery by such date if delivered personally, by overnight
3 mail, or wire transfer.

4 Payment may be made by certified funds to: Treasurer of the Placer County Air Pollution
5 Control District, or via wire transfer (with instructions being provided upon request from
6 Defendant)..

7 **5. INJUNCTIVE RELIEF**

8 Pursuant to the provisions of California Health & Safety Code sections 41513 and 42452,
9 Defendants are permanently enjoined for a period of five (5) years from violating all air quality
10 control laws, including but not limited to, Chapter 4 of Division 26 of the California Health &
11 Safety Code sections 42402.4, 42402.3(a), 42402.2(a), 42402.1(a), 42402(b)(1), 42402(a), 41954(f),
12 41960.2(a)-(b), 42303.5; regulations promulgated under this chapter, including California Code of
13 Regulations, title 23, sections 2715(e) and 2611; applicable California Air Resources Board
14 Executive Orders VR-202 and VR-204; as well as PCAPCD Rule 214 Sec. 301, PCAPCD Rule 214
15 Sec. 303, PCAPCD Rule 214 Sec. 304, PCAPCD Rule 407, and FRAQMD Rules 3.8.E.1 and 3.13.
16 Failure to comply with this Final Judgment, including any of its terms or the specific additional
17 injunctive provisions that follow, may subject Defendants to contempt, shall constitute a material
18 breach of the Final Judgment, and shall result in the remaining balance owed by Defendants under
19 the Final Judgment becoming due and payable at the time of such material breach.

20 **5.1 Specific Injunctive Provisions**

21 **5.1.a** Defendants and their employees must obtain and maintain current air quality
22 certifications as required by Air Resources Board Executive Orders, Installation, Operation and
23 Maintenance Manuals ("IOMs"), and PCAPCD & FRAQMD Advisories for air quality and vapor
24 recovery services provided.

25 **5.1.b** Defendants shall conduct quality assurance and quality control verifications of the
26 accuracy of the data and test results submitted by Defendants and their employees to PCAPCD,
27 FRAQMD and GDF owners and operators.

5.1.c Defendants shall provide all air quality testing and service certifications for Defendants and their employees to the Plaintiff Air Districts on an annual basis, and no later than January 15th of each year.

5.1.d Defendants shall provide a minimum of 72 hours advance notice, in writing, of the performance by them, or any of their employees, of any air quality services or testing subject to the jurisdiction of PCAPCD or FRAQMD. On a case-by-case basis, the District may approve shorter notification time. All approvals will be provided in writing. Defendants shall coordinate with Plaintiff Air District personnel to ensure that those personnel are present for such air quality services and testing in the Plaintiff Air Districts' respective jurisdictions; if the Plaintiff Air Districts determine observation for an particular testing or service event is not necessary, this requirement will be waived in writing. The services and testing for which advance notice to the Plaintiff Air Districts is required under subsection 5.1.d include:

General Activities Requiring Notification:

- In Station Diagnostic (ISD) alarm response or troubleshooting
- Certified Unified Program Agencies (CUPA) alarm response or troubleshooting
- Designated operator work
- Any work to correct/identify defects as found on the California Air Resources Board (CARB) Vapor Recovery Equipment Defect List
- Point of sale software/hardware work
- Dispenser work
- Any Veeder-Root programming
- Any Incon programming
- Any tank monitoring programming
- Performing a “cold start”
- Any other testing specified by CUPA authorities intended for use at gasoline dispensing facilities, including tests not yet approved.

Test Procedures Found in CARB Executive Orders:

- VR 201 Exhibit 5 Vapor to Liquid Ratio Test
- VR 201 Exhibit 7 Nozzle Bag Test Procedure
- VR 201 Exhibit 9 Liquid Condensate Test Procedure
- VR 201 Exhibit 14 Dispenser Integrity Test
- VR 201 Exhibit 15 ARID Technologies AT-150 Permeator Compliance Test Procedure
- VR 202 Exhibit 5 Vapor to Liquid Ratio Test
- VR 202 Exhibit 7 Nozzle Bag Test Procedure
- VR 202 Exhibit 9 Veeder-Root ISD Operability Test Procedure

- VR 202 Exhibit 10 FFS Incon ISD Operability Test Procedure
- VR 202 Exhibit 11 Liquid Condensate Test Procedure
- VR 202 Exhibit 14 Dispenser Integrity Test
- VR 202 Exhibit 15 ARID Technologies AT-150 Permeator Compliance Test Procedure
- VR 203 Exhibit 5 Liquid Removal Test Procedure
- VR 203 Exhibit 7 Nozzle Bag Test Procedure
- VR 203 Exhibit 8 VST ECS; Hydrocarbon Sensor Verification Test Procedure
- VR 203 Exhibit 9 VST ECS; Determination of Processor Activation Pressure
- VR 203 Exhibit 10 Veeder-Root; Vapor Pressure Sensor Verification Test Procedure
- VR 203 Exhibit 11 Veeder-Root Vapor Polisher, Operability Test Procedure
- VR 203 Exhibit 12 Veeder-Root Vapor Polisher; Hydrocarbon Emissions Verification Test Procedure
- VR 203 Exhibit 13 Hirt VCS 100 Processor; Operability Test Procedure
- VR 203 Exhibit 14 Franklin Fueling Systems CAS; Station Pressure Performance Test Procedure
- VR 203 Exhibit 15 VST Green Machine Compliance Test Procedure
- VR 203 Exhibit 16 Liquid Condensate Trap Compliance Test Procedure
- VR 204 Exhibit 5 Liquid Removal Test Procedure
- VR 204 Exhibit 7 Nozzle Bag Test Procedure
- VR 204 Exhibit 8 VST ECS; Hydrocarbon Sensor Verification Test Procedure
- VR 204 Exhibit 9 VST ECS; Determination of Processor Activation Pressure
- VR 204 Exhibit 10 Veeder-Root; Vapor Pressure Sensor Verification Test Procedure
- VR 204 Exhibit 11 Veeder-Root Vapor Polisher, Operability Test Procedure
- VR 204 Exhibit 12 Veeder-Root Vapor Polisher; Hydrocarbon Emissions Verification Test Procedure
- VR 204 Exhibit 13 Hirt VCS 100 Processor; Operability Test Procedure
- VR 204 Exhibit 14 Franklin Fueling Systems CAS; Station Pressure Performance Test Procedure
- VR 204 Exhibit 15 VST Green Machine Compliance Test Procedure
- VR 204 Exhibit 16 Liquid Condensate Trap Compliance Test Procedure
- VR 204 Exhibit 17 Veeder-Root; ISD Vapor Flow Meter Operability Test Procedure
- VR 204 Exhibit 19 INCON Flow Meter Operability Test Procedure
- VR 204 Exhibit 20 INCON Pressure Sensor Operability Test Procedure

Test Procedures found on CARB's Website:

- TP 201.1b Static Torque of Rotatable Phase I Adaptors
- TP 201.1c Leak Rate of Drop Tube/Drain Valve Assembly
- TP 201.1d Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves
- TP 201.13 Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves
- TP 201.3 Determination of 2 Inch WV Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities
- TP 201.3c Determination of Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test)
- TP 201.4 Dynamic Back Pressure

- TP 201.5 Air to Liquid Volume
- TP 201.6 Determination of Liquid Removal of Vapor Recovery Systems of Dispensing Facilities
- TP 201.6c Compliance determination of Liquid Removal Rate
- TP 206.3 Determination of Static Pressure Performance of Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks
- Any other testing specified by CARB or CARB approved test procedure intended for use at gasoline dispensing facilities, including tests not yet approved.

Certified Unified Program Agencies (CUPA) Activities:

- CCR 22637(g) – Triennial Secondary Containment Testing and Secondary Containment Repair Testing
- CCR 2637.1(f) – Annual Spill Bucket Testing and Spill Bucket Repair Testing
- CCR 2637.2(f) – Triennial Overfill Prevention Testing and Overfill Prevention Repair Testing
- CCR 2638(e) – Annual Monitoring Certification Testing and Monitoring Certification Repair Testing
- 2644.1 (a)(4) – Initial Enhanced Leak Detection Testing at install and Suspected Leak Investigations

Irrespective of whether the Plaintiff Air Districts waive the right to be present at the notified testing or services, notice provided by Defendants under this subsection shall include a detailed scope of work, the name and address of the facility where such work will take place, the names of all technicians working on site, all applicable certifications held by each technician required to perform such work, and the dates and times the work will be performed. In addition to the individuals listed in section 8, below, notifications provided to PCAPCD pursuant to this subsection shall be sent to vaporrecoverytesting@placer.ca.gov or pcapcd@placer.ca.gov.

5.1.e On a semi-annual basis, Defendants shall provide all documents in their possession to PCAPCD & FRAQMD evidencing any and all air quality services and testing enumerated in section 5.1.d, and performed by Defendants and their employees within the Plaintiff Districts' respective jurisdictions, and for any business entity in which any of the Defendants have equal to or more than a 25% ownership interest.

5.1.f For any business entity that performs the air quality testing or services enumerated in section 5.1.d within PCAPCD's & FRAQMD's jurisdictions, and which (a) is associated or affiliated with JAMES DAY, (b) is party to any joint venture or partnership with JAMES DAY, (c)

1 has hired JAMES DAY as a contractor or consultant for services having a value equal to or in
2 excess of Six Hundred Dollars (\$600.00) in the aggregate within any one (1) year period
3 (irrespective of whether JAMES DAY receives compensation for such services), (d) has engaged
4 JAMES DAY to provide air quality testing or services, or (e) for any such business entity in which
5 JAMES DAY has less than a 25% ownership interest, under these circumstances, JAMES DAY
6 must notify the Plaintiff Air Districts of any of the aforementioned business relationships within
7 fifteen (15) days of forming such business relationships. JAMES DAY must provide notice of those
8 business relationships described above and existing at the time of the Entry of Final Judgment
9 within fifteen (15) days of Entry of Final Judgment.

10 **6. "MATERIAL BREACH" - VIOLATION OF INJUNCTION AND FAILURE TO PAY**
11 **PENALTIES**

12 6.1. "Material Breach" is defined as follows:

13 6.1.a Failure to satisfy any injunctive, notice or payment term as required under this Final
14 Judgment.

15 6.1.b Failure to provide truthful and accurate information or notices as described in section
16 5.1 shall constitute a material breach of the Final Judgment.

17 6.1.c Failure to satisfy any monthly payment obligation for two (2) or more consecutive
18 months, or failure to pay previously owed and unpaid penalties from the previous month's payment
19 in the following month's penalty installment payment shall constitute a material breach of the Final
20 Judgment, unless otherwise agreed to by the Parties in writing, and approved by counsel.

21 6.2 Upon any Material Breach of any injunctive, notice, and payment term described in the
22 Final Judgment, the entire remaining amount owed by Defendants under the Final Judgment shall
23 become immediately due and payable and empower the People to exercise their rights under the
24 Final Judgment, Stipulated Writ of Execution, and Judgment by Confession..

25 **7. MATTERS COVERED BY THIS FINAL JUDGMENT**

26 **7.1** This Final Judgment is a final and binding resolution and settlement of all claims,
27 violations, or causes of action alleged by the People *ex rel.* PCAPCD & FRAQMD in the Complaint
28

1 against Defendants’ and any claims that could have been alleged based on conduct known to
2 PCAPCD & FRAQMD. The matters described in the previous sentences are “Covered Matters.”
3 Any claim, violation, or cause of action that is not a Covered Matter is a “Reserved Claim.”
4 Reserved Claims shall mean any unknown violation or any violation that occurs after October 19,
5 2020. The Parties reserve the right to pursue any Reserved Claim and to defend against any
6 Reserved Claim. PCACPD & FRAQMD acknowledge and agree that, as of the date of this Final
7 Judgment, they are not aware of the existence of any Reserved Claim.

8 **7.2** In any subsequent action that may be brought by the People *ex rel.* PCAPCD &
9 FRAQMD based on any Reserved Claim, Defendants agree that they will not assert that failing to
10 pursue any Reserved Claim as part of this action constitutes claim-splitting, but only if the claim
11 asserted by the People *ex rel.* PCAPCD & FRAQMD in such subsequent action is a *bona fide*
12 Reserved Claim.

13 **7.3** The provisions of paragraph 7.1 are effective on the date of Entry of the Final Judgment.
14 The continuing effect of paragraph 7.1 is expressly conditioned on Defendants’ full payment of the
15 amounts due under this Final Judgment.

16 **7.4** Paragraph 7.1 does not limit the ability of the People to enforce the terms of this Final
17 Judgment.

18 **7.5** Defendants covenant not to pursue any civil or administrative claims against the People
19 *ex rel.* PCAPCD & FRAQMD or against their officers, employees, representatives, agents, or
20 attorneys arising out of or related to any Covered Matter.

21 **7.6** Any event that is beyond the control of Defendants and that prevents Defendants from
22 timely performing any obligation under Paragraph 5 of this Final Judgment, despite Defendants’
23 best efforts to fulfill that obligation, is a “force majeure” event. For purposes of this Final
24 Judgment, a “Force Majeure Event” is any circumstance occurring after Entry of Final Judgment
25 which beyond the control of a Party, their contractors, or any entity controlled by the Party,
26 including without limitation, any act of God, war, fire, earthquake, flood, windstorm, pandemic, or
27 natural catastrophe; criminal acts; civil disturbance, vandalism, sabotage, or terrorism; restraint by
28

1 court order or public authority or agency; or action or non-action by, or inability to obtain the
2 necessary authorizations or approvals from any governmental agency. A Force Majeure Event shall
3 not include normal inclement weather, acts or omissions of Defendants or its employees,
4 representatives or agents, or Defendants' financial inability to fund or complete the obligation(s)
5 under this Final Judgment. Defendants shall provide notice to Plaintiff orally or by electronic or
6 facsimile transmission as soon as practicable, but not later than ten (10) days after the time
7 Defendants first knew of, or by the exercise of due diligence, should have known of, a claimed
8 Force Majeure Event. The notice shall describe the event and the length of any extension sought. If
9 Plaintiff agrees that a Force Majeure Event, as defined by this paragraph, has occurred, Plaintiff
10 shall agree to extend the time for Defendants to perform the affected requirements for the time
11 necessary to complete those obligations. Failures resulting from a Force Majeure Event shall not be
12 considered a breach of this Final Judgment, provided Defendants complies with the terms of this
13 paragraph. If Plaintiff does not agree that a Force Majeure Event, as defined by this paragraph, has
14 occurred or does not agree to the length of the extension of time sought by Defendants, Plaintiff's
15 position shall be binding, unless Defendants invokes Dispute Resolution under section 14 of this
16 Final Judgment. In any such dispute, Defendants bears the burden of proving, by a preponderance
17 of the evidence, that each claimed force majeure event is a Force Majeure Event, that Defendants
18 gave the notice required by this paragraph, that the Force Majeure Event caused any failure to
19 comply or delay in compliance with an obligation of this Final Judgment that Defendants claim was
20 attributable to that event, and that Defendants exercised reasonable efforts to prevent or minimize
21 any failure or delay in compliance caused by the event. The requirement that Defendants exercise
22 their "best efforts to fulfill the obligation" includes the requirement that Defendants use their best
23 efforts to anticipate any potential force majeure event and use best efforts to address the effects of
24 any potential force majeure event: (1) as it is occurring, and (2) following the force majeure event,
25 such that the delay is minimized to the greatest extent possible.

26 **8. NOTICE**

27 All submissions and notices required by this Final Judgment shall be sent to:
28

1 For the People *ex rel.* PCAPCD & FRAQMD:

2 Erik White
3 Bruce Springsteen, Compliance Supervisor
4 Air Pollution Control Officer
5 Placer County Air Pollution Control District
6 110 Maple Street,
7 Auburn, CA 95603

8 Christopher Brown, AICP
9 Air Pollution Control Officer
10 Feather River Air Quality Management District
11 541 Washington Ave.
12 Yuba City, CA 95991

13 With a copy to:

14 Matthew C. Maclear
15 Aqua Terra Aeris Law Group
16 mcm@atalawgroup.com

17 For Defendants JAMES DAY, BARBARA DAY, and MID VALLEY CONSULTING AND
18 GENERAL ENGINEERING:

19 James Day
20 1097 Bronco Drive
21 Plumas Lake, CA 95961

22 With a copy to:

23 Galen Gentry
24 Hughey Phillips, LLP
25 Counsel of Record for Defendants
26 520 9th St, Suite 230
27 Sacramento, CA 95814

28 Any Party may change its notice name and address by informing the other party in writing, but no change is effective until it proof of receipt is confirmed. All notices and other communications required or permitted under this Final Judgment that are properly addressed as provided in this paragraph are effective upon delivery if delivered personally or by overnight mail, or are effective five (5) days following deposit in the United States mail, postage prepaid, if delivered by First Class mail.

1 **9. EFFECT OF FINAL JUDGMENT**

2 Except as expressly provided in this Final Judgment, nothing in this Final Judgment is
3 intended nor shall it be construed to preclude the People *ex rel.* PCAPCD & FRAQMD, or any
4 state, county, city, or local agency, department, board or entity from exercising its authority under
5 any law, statute or regulation. Except as expressly provided in this Final Judgment, Defendants
6 retain all of their defenses to the exercise of the aforementioned authority

7 **10. LIABILITY OF THE PEOPLE**

8 The People *ex rel.* PCAPCD & FRAQMD shall not, in the absence of negligence or breach
9 of any duty imposed by law, be liable for any injury or damage to persons or property resulting
10 from acts or omissions by Defendants, their directors, officers, employees, agents, representatives or
11 contractors, in merely carrying out activities pursuant to this Final Judgment, nor shall the People *ex*
12 *rel.* PCAPCD & FRAQMD be held as a party to or guarantor of any contract entered into by
13 Defendants, its directors, officers, employees, agents, representatives or contractors, in carrying out
14 the requirements of this Final Judgment.

15 **11. NO WAIVER OF RIGHT TO ENFORCE**

16 The failure of the People to enforce any provision of this Final Judgment shall neither be
17 deemed a waiver of such provision nor in any way affect the validity of this Final Judgment. The
18 failure of the People *ex rel.* PCAPCD & FRAQMD to enforce any such provision shall not preclude
19 it from later enforcing the same or any Reserved Claim of this Final Judgment. Except as expressly
20 provided in this Final Judgment, Defendants retain all defenses allowed by law to any such later
21 enforcement. No oral advice, guidance, suggestions or comments by employees or officials of any
22 Plaintiff Air District regarding matters covered in this Final Judgment shall be construed to relieve
23 any Party of its obligations under this Final Judgment, unless made in writing and approved by
24 counsel.

25 **12. FUTURE REGULATORY CHANGES**

26 Nothing in this Final Judgment shall excuse Defendants from meeting any more stringent
27 requirements that may be imposed by applicable law or by any changes in the applicable law,
28

1 including but not limited to, any changes to Plaintiff Air District Rules or California Air Resources
2 Board Executive Orders.

3 **13. APPLICATION OF FINAL JUDGMENT**

4 This Final Judgment shall apply to and be binding upon the People *ex rel.* PCAPCD &
5 FRAQMD and upon Defendants, separately and each of them, and their officers, managers and
6 employees., agents performing work subject to the Air District's independent jurisdictions,
7 successors and assigns, provided, that, this Final Judgment shall not be applicable to any successor-
8 in-interest of Mid Valley Consulting & General Engineering following an arms-length sale of assets
9 to any *bona fide* third-party unaffiliated with any Defendants. If Defendants sell more than 25% of
10 Mid Valley Consulting's assets, the payment of the remaining of penalties owed and payable under
11 this [Stipulated] Final Judgment would become due and payable within 15 days of the asset
12 purchase.

13 **14. AUTHORITY TO ENTER FINAL JUDGMENT**

14 Each signatory to this Final Judgment certifies that he or she is fully authorized by the Party
15 he or she represents to enter into this Final Judgment, to execute it on behalf of the Party
16 represented and legally to bind that Party or Parties on whose behalf that individual is so signing.

17 **15. CONTINUING JURISDICTION & DISPUTE RESOLUTION**

18 **15.1** Pursuant to Code of Civil Procedure Section 664.6, the Court shall retain continuing
19 jurisdiction to enforce the terms of this Final Judgment and to address any other matters arising out
20 of this Final Judgment including any potential dispute among the Parties that may arise under the
21 provisions of this Final Judgment. The Court shall have the power to enforce this Final Judgment
22 with all available legal and equitable remedies, including contempt.

23 **15.2** Any Party may invoke the dispute resolution procedures of this Section by notifying
24 any other Party in writing of the matter(s) in dispute and of the disputing Party's proposal for
25 resolution. The Parties shall then meet and confer in good faith (either telephonically or in person)
26 within ten (10) days of the date of the notice to attempt to fully resolve the dispute no later than
27 thirty (30) calendar days from the date of the notice.

1 **15.3** If the Parties cannot resolve the dispute within thirty (30) days of the meet and confer
2 described in Paragraph 13.2, the Parties agree that the dispute may be submitted for formal
3 resolution by filing a motion before the Superior Court for the County of Placer.

4 **15.4** In resolving any dispute arising from this Final Judgment before the Court, the Parties
5 shall be entitled to seek fees and costs incurred.

6 **16. PAYMENT OF LITIGATION EXPENSES AND FEES**

7 The Parties shall pay their own attorney fees, expert witness fees and costs and all other
8 costs of litigation and investigation incurred to date.

9 **17. INTERPRETATION**

10 This Final Judgment was drafted equally by all Parties. The Parties agree that the rule of
11 construction holding that ambiguity is construed against the drafting party shall not apply to the
12 interpretation of this Final Judgment.

13 **18. COUNTERPART SIGNATURES**

14 This Final Judgment may be executed by the Parties in counterpart.

15 **19. ENTRY AFTER CONSIDERATION**

16 The Parties seek approval of this Final Judgment after consideration by the Court and have
17 requested that the Court decide that the Final Judgment is fair and in the public interest.

18 **20. INTEGRATION**

19 This Final Judgment constitutes the entire agreement between the Parties and may not be
20 amended or supplemented except as provided for in the Final Judgment. No oral representations
21 have been made or relied upon other than as expressly set forth herein.

22 **21. MODIFICATION OF FINAL JUDGMENT**

23 This Final Judgment may be modified only upon a noticed motion by one of the Parties with
24 approval of the Court, or upon written consent by all of the Parties and the approval of the Court.

25 **22. RECONVEYANCE OF DEED OF TRUST; SATISFACTION OF JUDGMENT**

26 Within fifteen (15) business days of the date on which Defendants complete payment of the civil
27 penalties described in Section 4.1 above, the People *ex rel.* PCAPCD & FRAQMD shall deliver to
28

1 Defendants: (a) a fully-executed and notarized reconveyance of the Deed of Trust in form and
2 substance reasonably satisfactory to Defendants, whom will provide the proposed language (b) a
3 fully-executed Acknowledgement of Satisfaction of Judgment with respect to this Final Judgment,
4 acknowledging full satisfaction of this Final Judgment and (c) a fully-executed Acknowledgement
5 of Satisfaction of Judgment, with respect to the Judgment by Confession acknowledging full
6 satisfaction of the Judgment by Confession, if and to the extent that the Judgment by Confession has
7 been filed with the Yuba County Superior Court. If the Judgment by Confession has not be filed
8 with the Yuba County Superior Court it shall be returned to Defendants for destruction within
9 fifteen (15) business days of completion of payments of the civil penalties hereunder.

10 **23. TERMINATION OF PERMANENT INJUNCTION**

11 After the Permanent Injunction has been in effect for five (5) years, and after the total amount
12 owed by Defendants under this Final Judgment has been paid in full, the injunction prescribed by
13 this Final Judgment in section 5 above shall terminate. Upon such termination, the injunctive
14 provisions under Paragraph 5 and 5.1 *I et seq.* shall have no prospective force or effect.

15
16
17 **Approved as to Form and Substance.**

18 Dated: 10/16/2020

AQUA TERRA AERIS LAW GROUP

19 By: 
20

Matthew C. Maclear
For Plaintiffs

21
22 Dated: 10/15/2020

HUGHEY PHILLIPS, LLP

23 By: 
24

Galen M. Gentry
For Defendants

25 **IT IS SO STIPULATED.**
26
27
28

1 Dated: _____

2 **PLACER COUNTY AIR POLLUTION CONTROL**
3 **DISTRICT**

4 By: _____
5 ADAM BAUGHMAN
6 Deputy Air Pollution Control Officer

7 **FEATHER RIVER AIR QUALITY MANAGEMENT**
8 **DISTRICT**

9 Dated: _____

10 By: _____
11 CHRISTOPHER BROWN
12 Air Pollution Control Officer

13 **FOR JAMES DAY; BARARA DAY, and MID VALLEY CONSULTING AND GENERAL**
14 **ENIGNEERING, a California Corporation.**

15 Dated: 10-15-2020

16 By: [Signature]
17 JAMES DAY

18 Dated: 10-15-2020

19 By: [Signature]
20 BARBARA DAY

21 DATED: 10-15-2020

22 By: [Signature]
23 MID VALLEY CONSULTING & GENERAL ENGINEERING
24 JAMES DAY, PRESIDENT/CEO

25 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

26 DATED: _____

27 By: _____
28 HON. CHARLES D. WACHOB
JUDGE OF THE SUPERIOR COURT

1 Dated: 10/15/2020

2 **PLACER COUNTY AIR POLLUTION CONTROL**
3 **DISTRICT**

4 By: 

5 ADAM BAUGHMAN

6 Deputy Air Pollution Control Officer

7 **FEATHER RIVER AIR QUALITY MANAGEMENT**
8 **DISTRICT**

9 Dated: _____

10 By: _____

11 CHRISTOPHER BROWN

12 Air Pollution Control Officer

13 **FOR JAMES DAY; BARARA DAY, and MID VALLEY CONSULTING AND GENERAL**
14 **ENIGNEERING, a California Corporation.**

15 Dated: _____

16 By: _____

17 JAMES DAY

18 Dated: _____

19 By: _____

20 BARBARA DAY

21 DATED: _____

22 BY: _____

23 MID VALLEY CONSULTING & GENERAL ENGINEERING
24 JAMES DAY, PRESIDENT/CEO

25 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

26 DATED: _____

27 BY: _____

28 HON. CHARLES D. WACHOB

JUDGE OF THE SUPERIOR COURT

1 Dated: _____

2 **PLACER COUNTY AIR POLLUTION CONTROL**
3 **DISTRICT**

4 By: _____

5 ADAM BAUGHMAN

6 Deputy Air Pollution Control Officer

7 **FEATHER RIVER AIR QUALITY MANAGEMENT**
8 **DISTRICT**

9 Dated: 10/15/20 _____

10 By: Christopher Brown

11 CHRISTOPHER BROWN

12 Air Pollution Control Officer

13 **FOR JAMES DAY; BARARA DAY, and MID VALLEY CONSULTING AND GENERAL**
14 **ENIGNEERING, a California Corporation.**

15 Dated: _____

16 By: _____

17 JAMES DAY

18 Dated: _____

19 By: _____

20 BARBARA DAY

21 DATED: _____

22 BY: _____

23 MID VALLEY CONSULTING & GENERAL ENGINEERING
24 JAMES DAY, PRESIDENT/CEO

25 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

26 DATED: _____

27 BY: _____

28 HON. CHARLES D. WACHOB

JUDGE OF THE SUPERIOR COURT

Exhibit C
to
[Stipulated]
Final
Judgment

MATTHEW C. MACLEAR, SBN 209228
4030 Martin Luther King Jr. Way
Oakland, CA 94609
Telephone: (415) 568-5200
e-mail: mcm@atalawgroup.com

Attorneys for the Plaintiffs

*The People of the State of California ex rel.
Placer County Air Pollution Air Control District
Feather River Air Quality Management District*

**CALIFORNIA SUPERIOR COURT
COUNTY OF YUBA**

**PEOPLE FOR THE STATE OF
CALIFORNIA, *ex rel.* PLACER COUNTY
AIR POLLUTION CONTROL DISTRICT
and FEATHER RIVER AIR QUALITY
MANAGEMENT DISTRICT,**

Plaintiffs,

vs.

**JAMES DAY, individually; BARBARA DAY,
individually, MID VALLEY CONSULTING &
GENERAL ENGINEERING, a California
corporation; and DOES 1-10, inclusive,**

Defendants.

Case No.:

**JUDGMENT BY CONFESSION
C.C.P. §§ 1132-1134**

1 The PEOPLE OF THE STATE OF CALIFORNIA *ex rel.* PLACER COUNTY AIR
2 POLLUTION CONTROL DISTRICT and FEATHER RIVER AIR QUALITY MANAGEMENT
3 DISTRICT (“People *ex rel.* PCAPCD & FRAQMD” or “the People”) and Defendants JAMES
4 DAY, BARBARA DAY, and MID VALLEY CONSULTING AND GENERAL ENGINEERING.,
5 a California Corporation (collectively, “Defendants”) and their attorneys of record stipulate and
6 agree, as follows:
7

8 1. The People shall have judgment without the taking of proof and without a trial and
9 adjudication of any factual or legal issues, on the basis of an *ex parte* application or other
10 submittal/filing with the Clerk of the Court, as no noticed motion is required under the terms of the
11 agreement between the People and Defendants. The [Stipulated] Final Judgment, attached to the
12 Declaration of Attorney for Defendants In Support of the Judgment by Confession at **Exhibit A**,
13 enumerates the rights and liabilities of the People and Defendants and is incorporated herein by
14 reference as though fully set forth.

15 2. The People acknowledge and agree that this Judgment by Confession is identical in all
16 respects to the [Stipulated] Final Judgment as it arises from exactly the same factual circumstances
17 and legal theories and does not impose any additional liability or obligation upon Defendants. The
18 People acknowledge and agree that the [Stipulated] Final Judgment was entered into in order to
19 settle disputed claims and that the [Stipulated] Final Judgment is neither an admission nor denial by
20 Defendants of any issue of law or fact or any violation of law.
21

22 3. The Court will enter judgment in this action, pursuant to the accompanying
23 [Stipulated] Final Judgment and on filing with the Clerk of the Court or on an *ex parte* request by the
24 People without a noticed motion to Defendants as set forth in the [Stipulated] Final Judgment entered
25 into between the parties.

26 a. Specifically, the terms and conditions for Entry of Judgment are found in
27 Sections 4 (“Payments and Civil Penalties”), 5 (“Injunctive Relief”), and 6 (“Material Breach”),
28 including all subsections thereto, of the [Stipulated] Final Judgment, filed concurrently herewith.

b. The identification of claims and actions covered and reserved by the Final Judgment are found in Sections 2 ("Settlement of Disputed Claims") and 7 ("Matters Covered by This Final Judgment"), including all subsections thereto, of the [Stipulated] Final Judgment.

c. Other terms relevant to the Entry of Final Judgment are found in Sections 3 ("Definitions"), 4 ("Waver of Claims"), 9 ("Effect of Final Judgment"), 13 ("Application of Final Judgment"), 14 ("Authority to Enter Final Judgment"), 17 ("Interpretation"), and 19 ("Entry After Consideration"), and including all subsections thereto.

3. On entry, this Judgment by Confession will become final and execution may be levied on it immediately.

4. Any amounts paid toward the [Stipulated] Final Judgment shall also be credited against this Judgment by Confession and full satisfaction of the [Stipulated] Final Judgment shall be deemed conclusive evidence that this Judgment by Confession has also been fully satisfied.

MID VALLEY CONSULTING AND GENERAL ENGINEERING

Date: 10-14-2020

Signature: [Signature]

Printed Name: JAMES A DAY
President/CEO

JAMES DAY

Date: 10-14-2020

Signature: [Signature]

Printed Name: JAMES A DAY

BARBARA DAY

Date: 10-15-2020

Signature: [Signature]

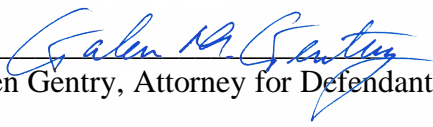
Printed Name: Barbara DAY

1 **APPROVED AS TO FORM BY COUNSEL FOR DEFENDANTS:**

2 Pursuant to California Civil Code of Procedure Section 1132, counsel certifies he/she has examined
3 the proposed judgment and has advised DEFENDANTS with respect to the waiver of rights and
4 defenses under the confession of judgment procedure and has advised DEFENDANTS to utilize the
confession by judgment procedure.

5 HUGHEY PHILLIPS

6 Date: 10/15/2020

7 Signature: 
8 Galen Gentry, Attorney for Defendants

9 **STIPULATED TO BY:**

10 PLACER COUNTY AIR POLLUTION CONTROL DISTRICT

11 Date: _____

12 Signature: _____
13 Erik White, Air Pollution Control Officer

14
15 FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

16 Date: _____

17 Signature: _____
18 Christopher Brown, Air Pollution Control Officer

19 **APPROVED AS TO FORM BY COUNSEL FOR THE PEOPLE ex rel. PCAPCD AND**
20 **FRAQMD:**

21 AQUA TERRA AERIS LAW GROUP

22 Date: _____

23 Signature: _____
24 Matthew C. Maclear, Attorney for Plaintiffs

1 **APPROVED AS TO FORM BY COUNSEL FOR DEFENDANTS:**

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confession by judgment procedure.

5 HUGHEY PHILLIPS

6 Date: _____

7 Signature: _____
Galen Gentry, Attorney for Defendants

8
9 **STIPULATED TO BY:**

10 PLACER COUNTY AIR POLLUTION CONTROL DISTRICT

11 Date: 10/15/2020

12 Signature: 
13 Erik White, Air Pollution Control Officer

14
15 FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

16 Date: _____

17 Signature: _____
18 Christopher Brown, Air Pollution Control Officer

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20 **FRAQMD:**

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22 Date: _____

23 Signature: _____
24 Matthew C. Maclear, Attorney for Plaintiffs

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confession by judgment procedure.

5 HUGHEY PHILLIPS

6 Date: _____

7 Signature: _____
Galen Gentry, Attorney for Defendants

8
9 **STIPULATED TO BY:**

10 PLACER COUNTY AIR POLLUTION CONTROL DISTRICT

11 Date: _____

12 Signature: _____
13 Erik White, Air Pollution Control Officer

14
15 FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT

16 Date: 10/15/20

17 Signature: Christopher Brown
18 Christopher Brown, Air Pollution Control Officer

19 **APPROVED AS TO FORM BY COUNSEL FOR THE PEOPLE ex rel. PCAPCD AND**
20 **FRAQMD:**

21 AQUA TERRA AERIS LAW GROUP

22 Date: 10/16/2020

23 Signature: 
24 Matthew C. Maclear, Attorney for Plaintiffs

MATTHEW C. MACLEAR, SBN 209228
4030 Martin Luther King Jr. Way
Oakland, CA 94609
Telephone: (415) 568-5200
e-mail: mcm@atalawgroup.com

Attorneys for the Plaintiffs

*The People of the State of California ex rel.
Placer County Air Pollution Air Control District
Feather River Air Quality Management District*

**CALIFORNIA SUPERIOR COURT
COUNTY OF YUBA**

**PEOPLE FOR THE STATE OF
CALIFORNIA, *ex rel.* PLACER COUNTY
AIR POLLUTION CONTROL DISTRICT
and FEATHER RIVER AIR QUALITY
MANAGEMENT DISTRICT,**

Plaintiffs,

vs.

**JAMES DAY, individually; BARBARA DAY,
individually, MID VALLEY CONSULTING &
GENERAL ENGINEERING, a California
corporation; and DOES 1-10, inclusive,**

Defendants.

Case No.:

**DECLARATION OF ATTORNEY FOR
DEFENDANTS IN SUPPORT OF
JUDGMENT BY CONFESSION
C.C.P. §§ 1132-1134**

1
2 **DECLARATION OF ATTORNEY FOR DEFENDANT**

3 **Pursuant to Section 1132 of California Code of Civil Procedure**

4
5 I, Galen M. Gentry, declare:

6 1. I am an attorney at law licensed to practice in all of the courts of the State of
7 California and attorney duly representing Defendants JAMES DAY, BARBARA DAY, and MID
8 VALLEY CONSULTING AND GENERAL ENGINEERING, ("Defendants"), in this matter.

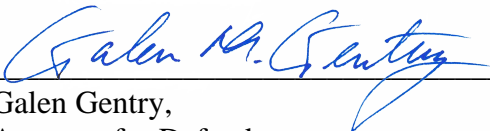
9 2. I have reviewed the Judgment by Confession, as well as the [Stipulated] Final
10 Judgment, attached hereto as **Exhibit A**, and filed concurrently with and supporting the Judgment
11 by Confession, between Defendants and THE PEOPLE OF THE STATE OF CALIFORNIA *ex rel.*
12 PLACER COUNTY AIR POLLUTION CONTROL DISTRICT and FEATHER RIVER AIR
13 QUALITY MANAGEMENT DISTRICT.

14 3. I have advised Defendants with respect to all waivers of rights and defenses included
15 within the Stipulated Final Judgment and Judgment by Confession that pertain to the Defendants.

16 4. I have advised the Defendants of their rights and liabilities associated with using the
17 Confession of Judgment procedure in order to resolve claims made by the People *ex rel.* Placer
18 County Air Pollution Control District and Feather River Air Quality Management District.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing
20 is true and correct.

21 Executed on this 15th day of October 2020, at Sacramento, California.

22 
23 _____
24 Galen Gentry,
25 Attorney for Defendants
26
27
28

MATTHEW C. MACLEAR, SBN 209228
4030 Martin Luther King Jr. Way
Oakland, CA 94609
Telephone: (415) 568-5200
e-mail: mcm@atalawgroup.com

Attorneys for the Plaintiffs

*The People of the State of California ex rel.
Placer County Air Pollution Air Control District
Feather River Air Quality Management District*

**CALIFORNIA SUPERIOR COURT
COUNTY OF YUBA**

**PEOPLE FOR THE STATE OF
CALIFORNIA, *ex rel.* PLACER COUNTY
AIR POLLUTION CONTROL DISTRICT
and FEATHER RIVER AIR QUALITY
MANAGEMENT DISTRICT,**

Plaintiffs,

vs.

**JAMES DAY, individually; BARBARA DAY,
individually, MID VALLEY CONSULTING &
GENERAL ENGINEERING, a California
corporation; and DOES 1-10, inclusive,**

Defendants.

Case No.:

**DECLARATION OF DEFENDANT IN
SUPPORT OF JUDGMENT BY
CONFESSION
C.C.P. §§ 1132-1134**

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DECLARATION OF DEFENDANT

Pursuant to Section 1133 of California Code of Civil Procedure

I, JAMES A. DAY, declare:

1. I have reviewed and agreed to the [Stipulated] Final Judgment, attached hereto as **Exhibit A**, and filed concurrently herewith and supporting the Judgment by Confession resolving the matter between myself, my wife and Mid Valley Consulting & General Engineering and the People *ex rel.* Placer County Air Pollution Control District and Feather River Air Quality Management District.

3. I understand and acknowledge that I have agreed to the [Stipulated] Final Judgment in exchange for a resolution of the pending litigation against me and brought by the People of the State of California *ex rel.* Placer County Air Pollution Control District and the Feather River Air Quality Management District.

4. I understand and acknowledge that I have agreed to comply with all terms of the Stipulated Final Judgment, including but not limited to the injunctive, notice, and payment terms included therein.

5. I agree that pursuant to this Judgment by Confession, and in the event that I commit a material breach, as defined in the [Stipulated] Final Judgment, by violating any the injunctive, notice, or payment terms of the [Stipulated] Final Judgment, that the People *ex rel.* Placer County Air Pollution Control District and the Feather River Air Quality Management District may enforce the Stipulated Writ of Execution via this Judgment by Confession and accompanying [Stipulated] Final Judgment to satisfy any remaining balance owed on the TWO HUNDRED AND FIFTY THOUSAND DOLLAR (\$250,000) penalty under the [Stipulated] Final Judgment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 15th day of October, 2020, at Plumms Lake CA, California.



JAMES A. DAY

President/CEO of Mid Valley Consulting & General Engineering