

1 Good cause appearing herein, the Court finds that the settlement between the Plaintiff,
2 People of the State of California, and Defendants Rex Sutter and Modesto Plating, a California
3 corporation, is fair and in the public interest. Accordingly, the Stipulation for Settlement and
4 Entry of Judgment on Consent and Permanent Injunction entered into by Plaintiff, the People of
5 the State of California, and Defendants Rex Sutter and Modesto Plating, a California corporation,
6 a true and correct copy of which is attached hereto as Exhibit A, is approved, and the Final
7 Judgment on Consent and Permanent Injunction is entered as provided therein.

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9 **IT IS SO ORDERED.**

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12 Dated: 5/23, 2011

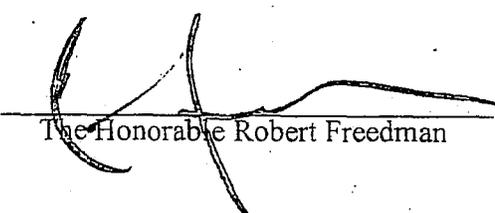
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14 The Honorable Robert Freedman
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EXHIBIT A

1 KAMALA D. HARRIS
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2 MARGARITA PADILLA
Supervising Deputy Attorney General
3 OLIVIA W. KARLIN, SBN 150432
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7 *Attorneys for Plaintiff*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11
12 **PEOPLE OF THE STATE OF**
CALIFORNIA *ex rel.* CALIFORNIA
13 **DEPARTMENT OF TOXIC**
SUBSTANCES CONTROL,

14 **Plaintiff,**

15 v.

16 **REX SUTTER, individually and doing**
17 **business as MODESTO PLATING AND**
18 **POWDER COATING; MODESTO**
PLATING, a California Corporation; and
DOES 1 to 20,

19 **Defendants.**

Case No. RG11555885

Assigned for all purposes to the
Honorable Robert B. Freedman
Department 20

20
21 **STIPULATION FOR SETTLEMENT**
AND ENTRY OF JUDGMENT ON
22 **CONSENT AND PERMANENT**
23 **INJUNCTION**

(Code of Civil Procedure § 664.6)

Trial Date: None Set
Action Filed: January 13, 2011

24 Plaintiff People of the State of California *ex rel.* Department of Toxic Substances Control
25 (“Plaintiff,” or the “Department”) and Defendants Rex Sutter and Modesto Plating, a California
26 corporation (“Defendants”) (collectively referred to herein as “the Parties”) enter into this
27 Stipulation for Settlement and Entry of Judgment on Consent and Permanent Injunction
28 (“Stipulation”), and stipulate as follows:

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1. THE FIRST AMENDED COMPLAINT

On May 13, 2011, Plaintiff filed a First Amended Complaint for Civil Penalties and Injunctive Relief pursuant to the California Hazardous Waste Control Law, Health and Safety Code section 25100 et seq. ("HWCL") and its implementing regulations against Defendants as generators of hazardous waste and as owners and operators of a metal finishing and plating facility located at 436 Mitchell Road, Suite D, Modesto, California ("the Facility"), where hazardous waste is generated and managed.

2. AGREEMENT TO SETTLE DISPUTE

The Parties enter into this Stipulation pursuant to a compromise and settlement of disputed claims by mutually consenting to the entry by the Superior Court of the County of Alameda (the "Court") of the Final Judgment on Consent and Permanent Injunction in the form attached as Exhibit 1 ("Judgment"), a copy of which is submitted separately herewith. The Parties are each represented by counsel. The Department is represented by the Office of the Attorney General, and Defendants are represented by The Arnold Law Practice. This Stipulation and the Judgment were negotiated and executed in good faith and at arms' length by the Department and by Defendants to avoid expensive and protracted litigation regarding the alleged violations of the HWCL and to further the public interest.

3. JURISDICTION AND VENUE

The Department and Defendants agree that this Court has subject matter jurisdiction over the matters alleged in the First Amended Complaint and personal jurisdiction over each of the Defendants. Venue is proper pursuant to Health and Safety Code section 25183.

4. WAIVER OF HEARING AND TRIAL AND ENTRY OF JUDGMENT

By signing and entering into this Stipulation, Defendants waive their right to a trial on matters alleged in the First Amended Complaint. Further, the Department and Defendants request entry of the Judgment on the terms set forth in this Stipulation.

5. APPLICABILITY

The provisions of this Stipulation and the Judgment shall apply to and be binding on: (a) Rex Sutter as an individual, and on Modesto Plating, a California corporation, its subsidiaries and

1 divisions, its parent companies, its officers and directors, its successors and assignees or other
2 entities, acting by, through, under or on behalf of Modesto Plating; and (2) the Department and
3 any successor agency of the Department that may have responsibility for and jurisdiction over the
4 subject matter of this Judgment.

5 **6. DEFINITIONS**

6 Except where otherwise expressly defined in this Stipulation, all terms shall be interpreted
7 consistent with Chapters 6.5 and 6.95 of Division 20 of the California Health and Safety Code
8 and the regulations promulgated under these chapters.

9 "Certified Unified Program Agency," or "CUPA," is an agency certified by the California
10 Environmental Protection Agency pursuant to the requirements of Chapter 6.11 of the California
11 Health and Safety Code, and Title 27 of the California Code of Regulations, to implement certain
12 State environmental programs within the agencies' jurisdiction.

13 "Facility" means the metal finishing and plating facility located at 436 Mitchell Road,
14 Suite D, Modesto, California, where hazardous waste is generated and managed by Defendants.

15 "Hazardous waste" shall have the definition in California Health and Safety Code section
16 27117.

17 The "Hazardous Waste Control Law" and "HWCL" refer to Chapter 6.5 of Division 20 of
18 the California Health and Safety Code, § 25100 et seq. and the implementing regulations,
19 California Code of Regulations, Title 22, Chapter 10, § 66260.1 et. seq.

20 "Hazardous waste management" shall have the definition in California Health and Safety
21 Code section 25117.2.

22 **7. SETTLEMENT**

23 The Department and Defendants enter into this Stipulation as a compromise and
24 settlement of disputed claims for the purpose of avoiding prolonged and complicated litigation
25 and in furtherance of the public interest. The Department and Defendants both request entry of
26 judgment on the terms set forth in this Stipulation. The Department and Defendants agree that
27 there has been no adjudication of any fact or law.

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1 **8. INJUNCTION**

2 Defendants shall comply with the following:

3 A. Upon entry of the Judgment in this matter, consistent with California Code of
4 Regulations, title 22, section 66262.11, subdivision (b)(1), Defendants shall test any new waste
5 streams generated at the Facility prior to disposal, and maintain records of testing for a period of
6 five years from the date of testing. The test records shall be maintained at the Facility and shall
7 be made available to the Department and to the local CUPA upon request.

8 B. Within thirty calendar days of the entry of the Judgment in this matter,
9 Defendants shall: (a) designate an individual, either a current employee or an individual newly
10 hired, to be an alternate emergency coordinator for the Facility, and (b) notify the Department in
11 writing of this individual's name.

12 C. Defendants shall have at all times for the Facility two individuals with the
13 requisite emergency coordinator training – an emergency coordinator and an alternate emergency
14 coordinator. The designation and training of the emergency coordinator and the alternate
15 emergency coordinator shall be consistent with the provisions set forth in California Code of
16 Regulations, title 22, section 66265.16, and the emergency coordinator and the alternate
17 emergency coordinator shall follow the specific provisions set forth in California Code of
18 Regulations, title 22, section 66265.56, in carrying out their duties at the Facility. Consistent with
19 the regulations (California Code of Regulations, title 22, section 66265.55), either the emergency
20 coordinator or the alternative emergency coordinator shall be on-site when the Facility is
21 operating, or reachable by telephone and able to be on-site within twenty (20) minutes. After
22 hours, either the emergency coordinator or the alternative emergency coordinator shall be
23 available by telephone in the event an emergency arises.

24 Both the emergency coordinator and the alternate emergency coordinator shall receive
25 training with respect to hazardous waste management, as the term "management" is defined in
26 Health & Safety Code section 25117.2, and, more specifically, with respect to the management of
27 hazardous waste streams generated by Defendants at the Facility. This may be accomplished by
28 having the emergency coordinators attend California Compliance School and successfully pass,

1 or receive 30 hours of training from Jim Miille, President of Chemical Solutions, Inc. Defendants
2 shall notify the Department in writing within 10 days of the emergency coordinator's and
3 alternate emergency coordinator's successful completion of California Compliance School or the
4 requisite 30 hours of training by Mr. Miille. The training shall be completed within 180 calendar
5 days of the entry of the Judgment.

6 D. Defendants shall maintain financial assurance adequate to cover the complete
7 cost of closure of the fixed treatment units ("FTUs") at the Facility pursuant to California Code of
8 Regulations, title 22, section 67450.13 et seq. In order to prepare the closure cost estimate
9 pursuant to section 67450.13(a)(1), the parties agree to the following: The Department will
10 complete its review of Defendants' current closure plan, submitted by Defendants in December
11 2010 to the Stanislaus County Health Department, and provide in writing within fourteen (14)
12 days of entry of Judgment in this matter a brief summary of the closure plan's principal
13 inadequacies solely for the purpose of facilitating and expediting Defendants' revision of the
14 closure plan pursuant to this paragraph. The Department's preliminary review of Defendants'
15 closure plan will be based solely on a review of the Defendants' proposed written closure plan.
16 DTSC's final approval of the closure plan may require an on site inspection of the Facility and
17 FTUs. Defendants acknowledge that, notwithstanding the foregoing regarding the preliminary
18 review by the Department of the Defendants' proposed closure plan, it remains Defendants'
19 responsibility to prepare and provide a complete and adequate closure plan that complies with the
20 California Code of Regulations, title 22, section 67450.13 et seq., and to update the closure cost
21 estimate annually. In order to prepare a revised closure plan and a closure cost estimate pursuant
22 to section 67450.13(a)(1), Defendants shall, within thirty (30) calendar days of the entry of
23 Judgment in this matter, retain the services of a qualified individual such as a professional
24 engineer with experience in preparing closure plans and cost estimates for FTUs, obtain at least
25 three competitive bids for the closure costs, and make a selection from these bids. Defendants
26 shall comply with the permit-by-rule closure and closure cost regulations, and submit the revised
27 closure plan, the cost estimate, and supporting documentation to the Department, along with the
28 three competitive bids, within sixty (60) days of entry of Judgment. The Department shall review

1 and determine whether any modifications in the closure plan or the closure cost estimate shall be
2 made, and/or whether any additional documentation shall be submitted, and shall so inform
3 Defendants, with reasons provided in writing for requiring any such modifications. Defendants
4 shall submit any additional required documentation to the Department within thirty (30) days of
5 the date of notification by the Department. Defendants shall modify the closure plan and closure
6 cost estimate accordingly (if applicable), submitting it to the Department no later than sixty (60)
7 calendar days from the date of Department's notification ("Closure Plan Deadline"). Once the
8 modified closure plan and closure cost estimate have been submitted to the Department (if
9 applicable), the Department will review it and provide in writing its approval or rejection subject
10 to modification. No later than sixty (60) calendar days after the Department's written approval (if
11 applicable) of the closure plan and closure cost estimate ("Financial Assurance Deadline"),
12 Defendants shall post, by one of the methods approved in the regulations (see Cal. Code Regs.,
13 tit. 22, § 67450.13 et seq.), the required financial assurance. Failure of Defendants to submit a
14 closure plan and closure cost estimate approved by the Department by the Closure Plan Deadline,
15 or failure of Defendants to obtain financial assurance by the Financial Assurance Deadline, will
16 subject Defendants to stipulated penalties of \$500 per day for each of the first ten days after the
17 applicable deadline, with stipulated penalties to increase to \$750 a day for each day they remain
18 out of compliance thereafter. The closure plan and closure cost estimate approved by the
19 Department shall be submitted to the CUPA within fifteen (15) days of approval by the
20 Department; the financial assurance mechanism, if any, shall be submitted to the CUPA, with a
21 copy or proof of such mechanism to the Department, by the Financial Assurance Deadline.
22 Copies of all closure plans and cost estimates, including updated closure plans, cost estimates,
23 and financial assurance, that defendants submit to the CUPA shall be submitted to the Department
24 annually.

25 E. Defendants have installed in their Facility's buffing and polishing room dust
26 collection equipment with hoods and vents in an isolated room for all of the Facility's buffing and
27 polishing lathes and related equipment (collectively, "dust collection equipment") used for
28 operations that may cause the release of hazardous waste or hazardous waste constituents,

1 including buffing dust, to the environment and/or in the vicinity of the Facility's employees.
2 Installation and the operation of the dust collection equipment shall meet the following
3 requirements for control of hazardous waste or hazardous waste constituents:

4 Within one hundred and eighty (180) calendar days of entry of the Judgment, Defendants
5 shall provide the Department with an equipment installation report which shall include a copy of
6 the design documents including plans, and calculations, and as-built schematics for the selected
7 engineering control measures for the dust collection equipment at the Defendants' facility.
8 Defendants shall include with the report as-built schematics for the dust collection equipment,
9 construction authorization/permits including the final inspection report(s), the equipment
10 operating and maintenance manual(s), a written maintenance schedule(s) for the dust collection
11 equipment, and training documentation for employees responsible for equipment operation of and
12 waste management of wastes from the dust collection equipment.

13 Defendants shall ensure that the dust collection equipment and practices comply with all
14 hazardous waste laws and regulations including but not limited to proper labeling for hazardous
15 waste.

16 After installation or upgrade, Defendants shall use at the Facility the dust collection
17 equipment at all times when the buffing and polishing lathes are in operation and may cause the
18 release of hazardous waste or hazardous waste constituents. Defendants shall (a) continue at the
19 Facility a maintenance schedule for the dust collection equipment and shall maintain the
20 equipment in proper working condition at all times; (b) not conduct buffing operations if the dust
21 collection equipment is not functioning properly; and (c) conduct daily inspections and keep
22 records at the Facility of the buffing area and the dust collection equipment.

23 Defendants shall inspect for spills and/or releases of buffing dust on the floor, walls or
24 work areas of the Facility, and ensure that all equipment is functioning properly. In the event of a
25 spill or release of hazardous waste, Defendants shall take appropriate action consistent with the
26 Hazardous Waste Control Law. Defendants shall maintain a written daily log of the buffing area
27 inspections of the buffing and polishing room and the dust collection equipment at the Facility
28 that, at a minimum, includes:

- 1 (1) the operational status of dust collection equipment;
- 2 (2) whether spills or releases were observed; and
- 3 (3) maintenance work done to the equipment, if any.

4 Any spills or releases discovered shall be cleaned up immediately and noted in the daily
5 log of inspections, including the amount of waste cleaned up. Defendants shall maintain the
6 inspection log on site and make the log available to the Department or the CUPA for review if
7 requested.

8 **9. MONETARY SETTLEMENT REQUIREMENTS**

9 A. Judgment shall be entered in this matter for a civil penalty in the amount of one
10 million eight hundred thirty six thousand, eight hundred ninety one dollars (\$1,836,891). The
11 Department determined the penalties for the violations it alleges to be \$1,836,891. Defendants
12 have represented, and they also certify by signing below, that they do not have the financial
13 resources to pay the full penalty determined by the Department in this matter. Accordingly, in
14 reliance on Defendants' representations, and in settlement of this matter, the Department agrees
15 that civil penalties shall be paid in accordance with the provisions in Section 9B, 9C, and 10A.

16 In reliance on Defendants' representations and documents signed under penalty of perjury
17 that were provided to the Department confidentially, and in settlement of this matter, the
18 Department agrees that, provided that Defendants fully comply with all of the injunctive
19 provisions specified in Section 8 of this Stipulation, timely make the payment specified in section
20 9B in this Stipulation and the Judgment, do not commit a Class I violation in connection with the
21 ownership and operation of the Facility as provided in section 10A of this Stipulation, and
22 comply with section 9C of this Stipulation, Defendants' obligations pursuant to this Stipulation
23 and the Judgment regarding penalties will be fully satisfied.

24 B. Defendants shall pay the Department the sum of one hundred eighty thousand
25 dollars (\$180,000) in civil penalties by October 31, 2011.

26 C. In the event that within 5 years of the date of entry of the Judgment in this
27 matter, there is an agreement to sell or transfer the stock or assets of Defendants' business
28 operation known as Modesto Plating, a California corporation, which also has done and continues

1 to do business as Modesto Plating and Powder Coating, then, upon consummation of such sale or
2 transfer of the stock or assets, the Department shall be paid by Defendants any net proceeds of the
3 aforementioned sale or transfer up to one million eight hundred thirty six thousand, eight hundred
4 ninety one dollars (\$1,836,891), less any amount previously paid to the Department pursuant to
5 paragraph 9B of the Judgment.

6 D. All payments by Defendants to the Department pursuant to this Stipulation and
7 the Judgment shall be made by cashier's check, payable to the California Department of Toxic
8 Substances Control, and shall bear the following notation: "Modesto Plating, RG11555885" and
9 shall be sent to:

10 Cashier
11 Accounting Office, MS-21A
12 Department of Toxic Substances Control
13 P.O. Box 806
14 Sacramento, CA 95812-0806

15 An electronic (i.e., Adobe PDF) copy or paper photocopy of all checks and payments
16 made pursuant to the Judgment shall be sent, at the same time, to:

17 Chief
18 State Oversight and Enforcement Branch
19 Enforcement and Emergency Response Program
20 Department of Toxic Substances Control
21 8800 Cal Center Drive
22 Sacramento, CA 95826-3200

23 Robert Sullivan, Senior Staff Counsel
24 Office of Legal Counsel, MS-23A
25 Department of Toxic Substances Control
26 1001 I Street
27 P.O. Box 806
28 Sacramento, CA 95812-0806
Rsullivan@dtsc.ca.gov

and to

Olivia W. Karlin
Deputy Attorney General
Attorney General's Office
300 South Spring Street
Los Angeles, CA 90013
Olivia.Karlin@doj.ca.gov

1 **10. SATISFACTION OF CIVIL PENALTY PAYMENT REQUIREMENT**

2 A. If within five (5) years after the date of entry of the Judgment, the Department
3 determines that Defendants: (a) commit one or more Class I violations of the Hazardous Waste
4 Control Law (Class I violation as defined by California Code of Regulations, title 22, section
5 66260.10), (b) violate an injunctive provision of this Stipulation or the Judgment, or (c) fail to
6 make either of the payments required by Sections 9B and 9C of this Stipulation and the Judgment,
7 and such default is not cured pursuant to the provisions of Section 10B, then the full amount of
8 the one million eight hundred thirty six thousand, eight hundred ninety one dollars (\$1,836,891)
9 penalty, plus interest, will be immediately due and payable to the Department, less any payment
10 previously made by or on behalf of Defendants to the Department.

11 B. If the Department determines that Defendants have defaulted under the terms of
12 this Stipulation or the terms of the Judgment, the Department will provide Defendants with
13 written notice of the default. Such written notice constitutes Defendants' notice of their
14 reasonable opportunity to cure the default on the terms required by the Department. If
15 Defendants fail to cure the default within thirty calendar days of the date of the Department's
16 notice, the Department may proceed to pursue all its rights and remedies to enforce the Judgment.
17 Notwithstanding the foregoing, nothing herein is intended, or shall be construed, to preclude the
18 Department from initiating an enforcement action against Defendants, as an alternative to
19 enforcement of this Stipulation and the Judgment, for any violations of the HWCL not alleged to
20 date by the Department against Defendants.

21 **11. NOTICE**

22 A. All submissions and notices required by this Stipulation and the Judgment shall
23 be in writing, and shall be sent to:

24 For the Plaintiff:

25 Chief
26 State Oversight and Enforcement Branch
27 Enforcement and Emergency Response Program
28 Department of Toxic Substances Control
 8800 Cal Center Drive
 Sacramento, CA 95826-3200

1 Robert Sullivan, Senior Staff Counsel
2 Office of Legal Counsel
3 Department of Toxic Substances Control
4 1001 I Street, MS-23A
5 P.O. Box 806
6 Sacramento, CA 95812-0806

7 Olivia W. Karlin
8 California Department of Justice
9 300 Spring Street, Suite 1702
10 Los Angeles, CA 90013

11 For Defendants:

12 Rex Sutter
13 436 Mitchell Road, Suite D
14 Modesto, California 95354-3932

15 James R. Arnold
16 The Arnold Law Practice
17 3685 Mt. Diablo Boulevard, Suite 331
18 Lafayette, CA 94549

19 All approvals and decisions regarding any matter requiring approvals or decisions under
20 the terms of this Stipulation and the Judgment shall be communicated in writing. Each Party may
21 change its respective representative(s) for purposes of notice by providing the name and address
22 of the new representative, in writing, to all Parties. Any such change will take effect within 7
23 calendar days of the date of the written notice.

24 12. AUTHORITY TO ENTER STIPULATION

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

28 13. NO WAIVER OF RIGHT TO ENFORCE

The failure of the Department to enforce any provision of the Stipulation or Judgment
shall neither be deemed a waiver of such provision, nor in any way affect the validity of the
Judgment or the Department's enforcement authority. The failure of the Department to enforce
any such provision of this Stipulation or the Judgment shall not preclude it from later enforcing
the same or other provisions. No oral advice, guidance, suggestions, or comments by employees

1 or officials of the Department or Defendants, or people or entities acting on behalf of Defendants,
2 regarding matters covered in this Stipulation or the Judgment, shall be construed to relieve
3 Defendants of their obligations under this Stipulation or the Judgment.

4 **14. APPLICATION OF CONSENT JUDGMENT**

5 Both this Stipulation and the Judgment shall apply to and be binding on the Department
6 and upon Defendants, and upon their successors and assigns.

7 **15. EFFECT OF STIPULATION AND JUDGMENT**

8 Except as expressly provided in this Stipulation or in the Judgment, nothing herein is
9 intended, nor shall it be construed, to preclude the Department, or any state, county, or local
10 agency, department board or entity, or any CUPA, from exercising its authority under any law,
11 statute, or regulation.

12 **16. NO LIABILITY OF THE DEPARTMENT**

13 The Department shall not be liable for any injury or damage to persons or property
14 resulting from acts or omissions by Defendants, their officers, directors, employees, agents,
15 representatives, or contractors, in carrying out activities pursuant to this Stipulation or the
16 Judgment, nor shall the Department be held as a party to or guarantor of any contract entered into
17 by Defendants, its officers, directors, employees, agents, representatives, or contractors, in
18 carrying out the requirements of this Stipulation or the Judgment.

19 **17. FUTURE REGULATORY CHANGES**

20 Nothing in this Stipulation or in the Judgment shall excuse Defendants from meeting any
21 more stringent requirements that may be imposed by applicable law or by changes in the
22 applicable law. To the extent future statutory and regulatory changes make Defendants'
23 obligations less stringent than those provided for in this Stipulation or in the Judgment,
24 Defendants may apply to this Court by noticed motion to modify the obligations contained herein.

25 **18. INTEGRATION**

26 This Stipulation and the Judgment constitute the entire agreement between the Parties, and
27 may not be amended or supplemented except as provided for in this Stipulation or in the
28

1 Judgment. No oral representations have been made or relied on other than as expressly set forth
2 herein.

3 **19. RETENTION OF JURISDICTION**

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

6 **20. EQUAL AUTHORSHIP**

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

10 **21. AMENDMENTS TO THIS STIPULATION AND THE JUDGMENT**

11 This Stipulation and the Judgment may only be amended pursuant to a written agreement
12 signed by all the Parties, followed by written approval by the Court.

13 **22. COUNTERPARTS**

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

16 **23. ENTRY OF JUDGMENT PURSUANT TO STIPULATION**

17 The Parties further stipulate that upon approval of this Stipulation by the Court, the Court
18 shall enter the Judgment in this matter in the form set forth in the attached Exhibit 1. The
19 effective date of this Stipulation is the date this Stipulation is filed with the Court. The effective
20 date of the Judgment is the date the Judgment is entered by the Court. If the Court does not
21 approve this Stipulation and the Judgment in the form and substance proposed in Exhibit 1 hereto,
22 each party reserves the right to withdraw both the Stipulation and the Judgment upon written

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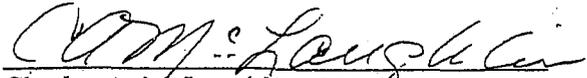
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notice to all Parties and the Court.

IT IS SO STIPULATED.

Dated: 1 SEPT, 2011

For the Department of Toxic Substances Control


Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Department of Toxic Substances Control

Dated: _____, 2011

For Defendants Rex Sutter and Modesto Plating,
a California corporation

By: _____
Rex Sutter

Approved as to form:

KAMALA D. HARRIS
Attorney General of California
Margarita Padilla
Supervising Deputy Attorney General

Dated: _____, 2011

OLIVIA W. KARLIN
LAURA J. ZUCKERMAN
Deputy Attorneys General
Attorneys for Plaintiff

THE ARNOLD LAW PRACTICE

Dated: _____, 2011

By: _____
James R. Arnold