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Superior Court of California
County of Los Angeles

DEC 23 2014

Sherri R. Carter, Executive Officer/Clerk
By Raul Sanchez, Deputy

7 *ATTORNEYS FOR PLAINTIFF, PEOPLE OF THE STATE OF*
8 *CALIFORNIA EX REL. STATE WATER RESOURCES*
CONTROL BOARD

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 **PEOPLE OF THE STATE OF CALIFORNIA EX**
13 **REL. STATE WATER RESOURCES CONTROL**
BOARD

Case No. BC430178

14 **PLAINTIFF,**

NOTICE OF MOTION AND
MOTION TO ENFORCE CONSENT
JUDGMENT AND ASSESS
SUSPENDED PENALTY;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF

15 v.

16 **CITY OF LONG BEACH, A MUNICIPAL**
17 **CORPORATION AND DOES 1-20 INCLUSIVE.**

18 **DEFENDANTS.**

[DECLARATION OF WILL SPETH IN
SUPPORT OF MOTION TO ENFORCE
CONSENT JUDGMENT FILED
CONCURRENTLY HEREWITH;
VOLUMES I AND II]

21 Date: January 23, 2015
22 Time: 9:15 a.m.
23 Dept: 44
24 Judge: The Honorable Mark
Borenstein

25 Complaint and Consent Judgment
26 Filed January 21, 2010

1 **TO THE CITY OF LONG BEACH AND TO COUNSEL OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT ON January 23, 2014 at 9:15 a.m. in DEPT 44 of this
3 Court located at 111 N. Hill Street, Los Angeles, California 90012, the Plaintiff, the People of
4 the State of California ex. rel. State Water Resources Control Board, will move this Court for an
5 order to enforce the Consent Judgment entered on January 21, 2010 and to assess in its entirety
6 the suspended penalty of \$2, 500,000 dollars (\$2.5 million).

7 This Motion is made pursuant to the provisions of the Consent Judgment and Permanent
8 Injunction, Paragraph 4.4 regarding failure of the City of Long Beach to comply with terms of
9 the Injunction set forth in Paragraphs 7.2 through 7.7 of the Consent Judgment (Suspended
10 Penalty Conduct), and pursuant to the procedure set forth in the Consent Judgment for assessment
11 of the entire suspended penalty. These paragraphs and retention of exclusive jurisdiction by the
12 Court in Paragraph 19 of the Consent Judgment provide the Court with the power to grant an
13 order finding that the City of Long Beach engaged in Suspended Penalty Conduct as defined in
14 the Consent Judgment and is required to pay the suspended penalty of \$2.5 million.

15 This motion is based upon the points and authorities and Declaration of Will Speth with
16 exhibits filed concurrently herewith, the Complaint filed January 21, 2010 and the Consent
17 Judgment and Permanent Injunction entered on January 21, 2010, and any further evidence or
18 argument that the Court may properly receive at or before the hearing.

19 Dated: December 23, 2014

Respectfully Submitted,

20
21 KAMALA D. HARRIS
22 Attorney General of California
23 Eric M. Katz
24 Supervising Deputy Attorney General

25 

26 MARILYN H. LEVIN
27 Deputy Attorney General
28 ATTORNEYS FOR PLAINTIFF, PEOPLE OF THE
STATE OF CALIFORNIA EX REL. STATE WATER
RESOURCES CONTROL BOARD

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The People of the State of California *ex rel.* State Water Resources Control Board (State
4 Water Board) seek to enforce a provision in the 2010 Consent Judgment and Permanent
5 Injunction (Consent Judgment) against the City of Long Beach (Long Beach) due to Long
6 Beach's violation of the Consent Judgment. The Consent Judgment required Long Beach to
7 comply with a permanent injunction requiring strict compliance with all regulations regarding
8 underground storage tanks used to hold hazardous substances, because Long Beach had a long
9 history of noncompliance prior to the Consent Judgment which endangered public health and
10 safety. The Consent Judgment imposed, but suspended \$2.5 million in penalties only if Long
11 Beach maintained strict compliance with underground storage tank regulations and did not
12 engage in prohibited conduct within a certain period of time beginning with entry of the Consent
13 Judgment. Even with the knowledge that just a single violation of an underground storage tank
14 regulation would require the imposition of all the suspended penalties, Long Beach has
15 committed not less than 40 separate violations at 15 different locations. The Consent Judgment
16 requires that the previously suspended penalties are now owed and due under the express terms of
17 the Consent Judgment, and the State Water Board respectfully requests that the Court require
18 Long Beach's compliance with that provision of the Consent Judgment.

19 **II. SUMMARY OF ARGUMENT**

20 In 1984, the Legislature declared the protection of the public from releases of hazardous
21 substances from underground storage tanks as an issue of statewide concern, noting that in several
22 known cases, releases contaminated public drinking water supplies and created a potential threat
23 to public health and to the waters of the state. (Chapter 6.7 of Division 20 of the California
24 Health and Safety Code, section 25280). The Legislature established strict requirements
25 governing the construction, operation, maintenance, and testing of underground storage tanks in
26 order to prevent releases of hazardous substances from underground tanks and thereby protect the
27 public's health and precious water resources.

1 The State Water Board administers the underground storage tank program in California and
2 is charged with ensuring that owners and operators of underground storage tanks comply with
3 these strict construction, operation, maintenance and testing requirements. The State Water
4 Board has adopted regulations to implement the statutes. (Cal. Code Regs., tit. 23, §§ 2610 et
5 seq.) The State Water Board has authority to seek civil penalties and injunctive relief through the
6 Attorney General's Office against those owners and operators who fail to comply. (Health and
7 Saf. Code, §§ 25299, 25299.01.)

8 To that end, on January 21, 2010, the Los Angeles County Superior Court entered a
9 Consent Judgment against Long Beach which resolved Long Beach's pervasive violations of
10 underground storage tank (UST) regulations at each of Long Beach's 40 UST facilities that
11 occurred on or before January 1, 2008.

12 The violations were specifically alleged in a Complaint filed by the People of the State of
13 California, on behalf of the State Water Board, concurrently with the Consent Judgment. The
14 Complaint and Consent Judgment are attached as Exhibits 1 and 2 to the Declaration of Will
15 Speth in support of this Motion. (Speth Decl., Exhs. 1 and 2.)

16 Due to the severity and extent of the violations at all 40 facilities owned and operated by
17 Long Beach, the Consent Judgment imposed \$6 million dollars in civil penalties, of which \$2.5
18 million dollars were suspended conditioned on Long Beach maintaining strict compliance with
19 certain requirements described in Paragraphs 7.2 through 7.7 of the Consent Judgment. The
20 purpose of the \$2.5 million dollars in suspended penalties was to strongly discourage Long Beach
21 from violating the Consent Judgment and UST statutes and regulations. The suspended penalty
22 was required to be secured by an instrument of financial assurance and would become due and
23 owing if Long Beach violated any one of the specific injunctive provisions in Paragraphs 7.2
24 through 7.7 prohibiting certain and identified conduct (Suspended Penalty Conduct).

25 The Consent Judgment expressly provides that "If Plaintiff [State Water Board] determines
26 that Long Beach has failed to comply with the terms of the Injunction set forth in Paragraphs 7.2
27 through 7.7, Plaintiff may file a noticed motion...requesting that the Court impose the suspended
28 penalty." The Consent Judgment further provides that "[u]pon a finding by the Court that Long

1 Beach has engaged in Suspended Penalty Conduct *on a single occasion*, the suspended penalty of
2 two million five hundred thousand dollars (\$2,500,000) *shall be assessed in its entirety* and the
3 Court shall have no discretion to reduce or otherwise modify the amount of the penalty.” (Speth
4 Decl. Exh. 2, ¶ 4.4.b, italics added.) The Consent Judgment also provides that “Long Beach
5 waives its right to assert substantial performance as a defense” to an Enforcement Motion by the
6 State Water Board alleging that the City has engaged in Suspended Penalty Conduct giving rise to
7 imposition of the \$2.5 million in suspended penalties.” (Speth Decl. Exh. 2, ¶ 4.4.b.)

8 Long Beach has engaged in Suspended Penalty Conduct on at least **40** occasions, during the
9 period of January, 2013 through August, 2014 at its 15 remaining UST facilities, each one of
10 which separately gives rise to assessment of the entire suspended penalty amount of \$2.5 million.
11 The Suspended Penalty Conduct includes: 1) the failure to install tamper proof sensors; 2) the
12 failure to timely perform enhanced leak detection testing; 3) the failure to properly place leak
13 detection sensors to assure that the sensor is capable of detecting releases at the earliest
14 opportunity; 4) the failure to timely repair secondary containment following test failure; 5) the
15 failure to design and construct USTs with adequate monitoring systems; 6) the failure to ensure
16 designated operator conducts appropriate training; 7) the failure to timely perform annual
17 certification of monitoring equipment; and 8) the failure to timely perform annual spill
18 containment structure testing. (Speth Decl., ¶¶ 15-62., Exh. 3, Exhs 5-60.)¹

19 The State Water Board has also identified 80 other violations of the general injunctive
20 provision in Paragraph 7.1 of the Consent Judgment. Although the Consent Judgment, in
21 Paragraph 9.2, provides the Court with additional authority to impose civil penalties pursuant to
22 Health and Safety Code section 25299 for each of the violations of the injunction, *in addition to*
23 assessing the suspended penalty amount, the State Water Board is not at this time seeking such
24 civil penalties. Instead, the State Water Board is seeking only the suspended penalty amount of
25 \$2.5 million. The State Water Board reserves the right to seek civil penalties pursuant to Health
26 and Safety Code section 25299 in a separate civil action for these additional violations.

27 _____
28 ¹ An Index of Exhibits 1 through 60 is included in the Declaration of Will Speth.

1 The Consent Judgment requires the State Water Board to meet and confer with Long Beach
2 prior to seeking the imposition of suspended penalties. The parties did so on July 22, 2014,
3 August 19, 2014, and October 6, 2014 and also exchanged various letters and lists of violations,
4 but were unable to resolve the matter. (Speth Decl., ¶¶ 15,64.) Having been unable to informally
5 resolve this matter, the State Water Board now respectfully requests that this Court impose \$2.5
6 million dollars in suspended penalties against Long Beach in accordance with and as required by
7 the terms of the Consent Judgment.

8 III. BACKGROUND

9 I. STATUTORY SCHEME

10 Chapter 6.7 of Division 20 of the Health and Safety Code and Title 23, California Code of
11 Regulations, Chapter 16, set forth strict construction, operation, maintenance and testing
12 requirements for underground tanks storing hazardous substances in California. (Health & Saf.
13 Code, §§ 25280 et seq.; Cal. Code Regs., tit. 23, §§ 2610 et seq..) The primary intent of these
14 statutes and regulations is to *prevent* the release of the hazardous substances being stored from
15 entering the environment. Once the hazardous substances have been released, the resulting harm
16 can be serious and difficult to remediate. A bulwark in the system to prevent releases is to have a
17 rigorous inspection and monitoring program to prevent releases before they occur and to detect
18 releases quickly if they do occur. (Health & Saf. Code, §§ 25280 (a) and (b).)

19 Because of the preventative nature of the statutes and regulations due to the risk of
20 substantial harm that can result from hazardous substances being released to soil and groundwater,
21 the Legislature authorized significant civil penalties against UST owners and operators that
22 violate the UST construction, operation, maintenance and testing requirements to act as a strong
23 deterrent to noncompliance. Unlike many other environmental penalty statutes, the Legislature
24 chose to impose a *minimum* penalty for violations of the UST laws below which regulators could
25 not go. Specifically, section 25299, subdivisions (a) and (b) of the Health and Safety Code
26 provides for civil penalties of *no less than \$500* and no more than \$5,000 per tank per day of
27 violation.

1 **II. FACTUAL BACKGROUND OF COMPLAINT AND CONSENT JUDGMENT**

2 Following a lengthy investigation at Long Beach's 40 UST facilities in 2010, the State
3 Water Board filed a Complaint for Civil Penalties and Injunctive Relief pursuant to Health and
4 Safety Code, Division 20, Chapter 6.7 alleging violations relating to the construction, operation,
5 maintenance and testing requirements concerning the storage of hazardous substances in USTs at
6 each one of Long Beach's then existing 40 UST facilities. (Speth Decl., Exh. 1.)

7 Long Beach's alleged violations included: failure to perform secondary containment testing,
8 failure to meet secondary containment design and/or upgrade construction requirements
9 (evidenced by failure to pass secondary containment test and/or failure to repair secondary
10 containment structures following testing failure), failure to perform annual spill containment
11 structure testing, failure to equip and/or maintain USTs in a manner to prevent releases due to
12 spills during product delivery (evidenced by failure to pass spill containment structure test and/or
13 to include spill bucket equipment meeting requirements), failure to operate and maintain USTs to
14 prevent spills by failing to remove liquid and debris from spill containment structures, failure to
15 design, construct, and install under-dispenser containment or an under-dispenser containment and
16 control system, failure to remove liquid from under-dispenser containment resulting in failure to
17 detect releases at the earliest possible opportunity, failure to monitor piping and under-dispenser
18 containment, failure to annually test and certify UST monitoring equipment, failure to install
19 and/or maintain automatic line leak detectors on underground pressurized piping, failure to
20 maintain functional overfill prevention systems, failure to perform monthly visual inspections of
21 UST systems and record monthly inspection reports, and failure to report unauthorized releases to
22 the designated local agency. (Speth Decl., Exh. 1.)

23 Each of these violations occurred across the 40 facilities where Long Beach stored gasoline
24 and diesel fuels in underground storage tanks it owned and/or operated. At issue in the Consent
25 Judgment were Long Beach's violations between January 1, 2003 and January 1, 2008². The
26

27 ² The parties entered into a tolling agreement up to and including the filing of the
28 Complaint.

1 alleged violations gave rise to daily penalties of no less than \$500 and up to \$5,000 per day for
2 each violation for each UST system, resulting in significant potential civil penalties.

3 With exposure to these significant potential civil penalties as a backdrop, Long Beach
4 agreed to the terms provided for in the Consent Judgment as resolution of its UST violations.
5 Several of the injunctive terms in the Consent Judgment were unique to Long Beach and intended
6 to offset or reduce even more the reduced amount of civil penalties paid by Long Beach, with the
7 intent that strict compliance in the future was required. The terms of settlement included:

- 8 • Imposition of \$6,000,000 in civil penalties, of which:
 - 9 ○ \$1,500,000 dollars was paid to the State Water Board's Cleanup and Abatement
10 Account;
 - 11 ○ \$2,000,000 dollars was suspended, conditioned on the City funding UST upgrades
12 that exceeded existing regulatory requirements and developing and implementing a
13 compliance management program (Enhanced Compliance Credits); and
 - 14 ○ \$2,500,000 dollars was suspended, conditioned, among other things, on the City
15 maintaining strict compliance with the injunctive terms specified in Paragraphs 7.2
16 through 7.7 of the Consent Judgment for a period of five years. Failure to comply
17 with these injunctive relief provisions on a single occasion was stipulated to be
18 Suspended Penalty Conduct that would give rise to payment of the entire \$2,500,000
19 dollar suspended penalty. A Letter of Credit was required as financial assurance to
20 the State Board.
- 21 • Reimbursement of the State Water Board's costs of enforcement in the amount of \$200,000
22 dollars;
- 23 • Long Beach agreed to accept responsibility for the violations;
- 24 • Long Beach was required to take out a full page color advertisement in the Sunday edition
25 of the Long Beach Press Telegram, which stated, in part, "The City of Long Beach is
26 appreciative of the efforts of the State Water Resources Control Board to identify instances
27 of pervasive non-compliance in the City's operation and maintenance of its Underground
28 Storage Tank Program. From 1998 through April 2007, the City failed to comply with

1 secondary containment testing and repair requirements. [...] [T]he City acknowledges the
2 seriousness of this issue and the potential for considerable adverse impact to the
3 environment;" and

4 • The City agreed to submit annual status reports (Annual Status Report) to the State Water
5 Board summarizing the actions taken during the previous year to comply with the Consent
6 Judgment and documenting any required monitoring and/or testing that occurred under
7 penalty of perjury.

8 IV. ARGUMENT

9 I. LONG BEACH HAS ENGAGED IN SUSPENDED PENALTY CONDUCT IN VIOLATION OF 10 THE CONSENT JUDGMENT

11 Following entry of the Consent Judgment, Long Beach closed a number of its UST systems
12 and replaced them with aboveground storage tanks, the costs of which were credited against the
13 City's Enhanced Compliance Credits. As of the date of filing of this motion, Long Beach
14 continues to own or operate 16 UST facilities. Long Beach has violated the terms of the Consent
15 Judgment by engaging in Suspended Penalty Conduct at 15 UST facilities involving 29 UST
16 systems. (Speth Decl. ¶¶ 8, 15-61.) The provisions of the Consent Judgment which Long Beach
17 has violated are summarized below.

18 A. Long Beach's Obligations Under the Consent Judgment

19 **Paragraph 7.2:** Paragraph 7.2 sets forth requirements for testing and certification of USTs
20 annually, and within certain other time periods, including the requirement for secondary
21 containment testing, spill containment structure testing, line tightness testing, and certification of
22 UST monitoring equipment. In addition, Paragraph 7.2.d requires follow-up repairs within 30-
23 120 days following a failure of testing in certain instances, and in immediate repairs in other
24 instances. (Speth Decl., Exh. 2.)

25 **Paragraph 7.4:** Paragraph 7.4 sets forth requirements for leak detection sensors, including
26 the requirement that all leak detection sensors are properly placed so they are capable of detecting
27 leaks at the earliest possible opportunity, that measures are implemented to regularly inspect the
28 UST system to assure all leak detection sensors are properly placed, that a log is maintained to

1 memorialized inspections, that Long Beach shuts the UST system down immediately if a sensor is
2 not properly placed, that no employee under the control of Long Beach intentionally remove,
3 dislodge, or otherwise tamper with any sensor, such that the sensor is not capable of detecting a
4 leak at the earliest possible opportunity. Additionally, Paragraph 7.4.c. requires: "On all sensors
5 that are part of a UST monitoring system and are accessible to employees, Long Beach shall
6 install devices to prevent tampering. In addition, Long Beach shall prohibit employees who are
7 not managers or supervisors or otherwise qualified to repair the UST monitoring system from
8 touching, tampering with or repositioning the sensors for any reason." (Speth Decl., Exh. 2.)

9 **Paragraph 7.5:** Paragraph 7.5 sets forth requirements for a Designated UST Operator for
10 each UST site, including the requirement that the Designated UST Operator perform a visual
11 inspection on every UST system every month, conducts the proper employee training, and has
12 access to all materials and areas of the facility and employees needed to complete the monthly
13 inspection and employee training. In addition, Paragraph 7.5 requires that Long Beach
14 immediately address any maintenance, repair or testing issues identified by the Designated UST
15 Operator. (Speth Decl., Exh. 2.)

16 **Paragraph 7.6:** Paragraph 7.6 sets forth additional UST requirements, including meeting
17 the basic operational requirements specified in the Health and Safety Code, maintaining and
18 making available for review all written monitoring and maintenance records and documenting
19 alarms related to the operation of its USTs, complying with employee training requirements,
20 ensuring that its USTs are equipped with spill containers, overfill prevention systems, and
21 automatic line leak detectors that are tested annually for tightness, and maintaining continuous
22 monitoring systems that are connected to audible and visual alarms and stop the flow of product
23 at the dispenser when a leak is detected, when appropriate. (Speth Decl., Exh. 2.)

24 **B. Long Beach's Suspended Penalty Conduct**

25 Long Beach's Suspended Penalty Conduct as defined in the Consent Judgment occurred at
26 the following 15 facilities (Speth Decl. ¶¶ 15-62, Exhs. 3, 5-60.):

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- **Shoreline Marina; 700 East Shoreline Drive:** The site is a retail marina refueling station with one 20,000-gallon compartmentalized UST. The first compartment of the UST stores 8,000 gallons of regular unleaded gasoline and the second compartment of the UST stores 12,000 gallons of diesel fuel.
- **Police Call Center; 2990 Redondo Avenue:** This site has one 10,000 gallon diesel UST used to supply fuel for two emergency backup generators.
- **Fire Station No. 16; 2890 East Wardlow Road:** This site is a refueling station for Long Beach Fire Department vehicles and has one 1,000 gallon UST containing diesel.
- **Police Station Downtown; 400 West Broadway:** This site is a service station used for refueling the City's Police Department vehicles and has three USTs: UST #1 is a 15,000 gallon tank storing regular unleaded gasoline; UST #2 is a 15,000 gallon tank storing premium unleaded gasoline; and UST #3 is a 6,000 gallon tank storing diesel fuel.
- **Police Station North; 4891 North Atlantic Avenue:** This site is a service station used for refueling the City's Police Department vehicles and for supplying fuel to an emergency backup generator. The site has one 14,000 gallon compartmentalized UST. The first compartment of the UST is 12,000 gallons and stores regular unleaded gasoline and the second compartment of the tank is 2,000 gallons and stores diesel fuel. The regular unleaded gasoline tank serves two dispensers and the diesel tank serves the emergency backup generator system.
- **Long Beach Gas Plant; 2400 East Spring Street:** This site has is a service station used for refueling City vehicles and has two USTs: UST #1 is a 20,000 gallon UST that stores regular unleaded gasoline and UST #2 is a 20,000 gallon UST that stores diesel fuel.
- **Alamitos Bay Marina; 227 Marina Drive:** This site is a retail marina fueling station and has two active 10,000 gallon single walled USTs that store diesel and regular unleaded gasoline along with three inactive single walled USTs that formerly stored diesel, midgrade unleaded gasoline, and premix unleaded gasoline.
- **Water Treatment Maintenance Yard; 1800 East Wardlow Road:** This site is a service station used for refueling the City's water maintenance vehicles. The site has two USTs: UST #1 is a 15,000 gallon UST that stores regular unleaded gasoline and UST #2 is a 10,000 gallon UST that stores diesel fuel.
- **Fire Station No. 11; 160 Market Street:** This site is a Fire Station with two USTs used for refueling City Fire Department vehicles: UST #1 is a 4,000 gallon that stores diesel and UST #2 is a 2,000 gallon UST that also stores diesel.
- **Fire Station No. 13; 2475 Adriatic Avenue:** This site is a Fire Station with one 1,000 gallon UST that stores diesel and is used for refueling City Fire Department vehicles.

- 1 • **Fire Station No. 14; 5200 Eliot:** This site is a Fire Station which houses
2 two USTs for refueling of City Fire Department vehicles: UST #1 is a
3 12,000 gallon tank that stores regular unleaded gasoline and UST #2 is a
4 12,000 gallon tank that stores diesel fuel.
- 5 • **Long Beach Airport; 4105 Donald Douglas Drive:** This site houses two
6 USTs used to supply fuel for two emergency backup generators: UST #1 is a
7 3,000 gallon tank that stores diesel and UST #2 is a 550 gallon tank that also
8 stores diesel.
- 9 • **Police Station West; 1835 Santa Fe Avenue:** This site is a Police Station
10 with one 12,000 gallon UST that stores regular unleaded gasoline and is
11 used for refueling of Long Beach police vehicles.
- 12 • **Fire Training Academy; 2249 Argonne Avenue:** This site is Long Beach
13 Fire Training Academy which houses two USTs for refueling City Fire
14 Department vehicles: UST #1 is a 5,000 gallon tank that stores regular
15 unleaded gasoline and serves one dispenser and UST #2 is a 20,000 gallon
16 tank that stores diesel fuel and serves one dispenser and a backup emergency
17 generator system.
- 18 • **City Hall; 333 West Ocean Blvd (Speth Decl. ¶ 50):** This site has one
19 5,000 gallon diesel UST that serves the emergency backup generator.

20 A detailed account of each and every instance of Long Beach's Suspended Penalty Conduct
21 at each of these 15 facilities is established in the Declaration of Will Speth, and a summary of the
22 violations is provided in a chart attached to Mr. Speth's Declaration as Exhibit 3. (Speth Decl.,
23 ¶¶15-62, Exhs. 3, 5-60.) In summary, Long Beach engaged in the following eight specific types
24 of violations that constitute Suspended Penalty Conduct in the Consent Judgment, Paragraphs 7.2,
25 7.4, 7.5 and 7.6:

- 26 • **Failure to Install Tamper Proof Sensors.** (Violation of Consent Judgment
27 ¶ 7.4.c.) During the compliance inspections of January 2, 2013, April 2,
28 2013 and April 4, 2013, Mr. Speth observed that Long Beach had failed to
install *any means* of tamper proofing for eleven sensors at three of its UST
facilities- Shoreline Marina, Police 911 Call Center and Alamitos Bay
Marine Fuel Dock. (Speth Decl., ¶¶ 19-25, Exhs. 5-24.)
- **Failure to Timely Perform Enhanced Leak Detection Testing.** (Violation
of Health & Saf. Code, § 25290.1 (j); Consent Judgment ¶ 7.6.a.) During the
inspection of Shoreline Marina on April 2, 2013, Mr. Speth determined that
enhanced leak detection testing required to be completed before a UST is in
use was not performed on the two USTs that were in use at the facility.
After email exchanges with Long Beach, the required enhanced leak
detection test was performed 388 days after the inspection. (Speth Decl., ¶¶
2627; Exhs. 25-29.)

- 1 • **Failure to Properly Place Leak Detection Sensors.** (Violation of Cal.
2 Code Regs., tit. 23, §§ 2630(d), 2641(a); Consent Judgment ¶ 7.4.a.). During
3 the inspections on January 18, 2013 and April 4, 2013, at the Police 911 Call
4 Center and the Alamitos Bay Marine Fuel Dock, Mr. Speth observed that
5 leak detection sensors that are designed to detect releases of substances
6 stored in a tank and activate an alarm at the earliest possible opportunity
7 were incorrectly placed at an angle and not at a true vertical position in
8 violation of the regulations and in contradiction to the manufacturer's
9 installation instructions. (Speth Decl., ¶¶ 28-32; Exhs. 30-34.)

- 10 • **Failed to Timely Repair Secondary Containment Following Test Failure.**
11 (Violation of Cal. Code Regs., tit. 23, § 2637; Consent Judgment ¶ 7.2.a and
12 d.). During Mr. Speth's review of the Annual Status Report covering the
13 time period from July 1, 2011 through June 30, 2012, Mr. Speth determined
14 that the secondary containment system associated with UST #1 containing
15 unleaded gasoline, at the Long Beach Gas Plant, failed secondary
16 containment testing on January 12, 2012, was not repaired and did not pass
17 secondary containment testing within 120 days of a test failure, until June 25,
18 2012 (165 days later). (Speth Decl., ¶¶ 33-35; Exhs. 35-36.)

- 19 • **Failure to Design and Construct USTs with Adequate Monitoring
20 System.** (Violation of Health & Saf. Code, § 25291(b); Cal. Code Regs., tit.
21 23, §§ 2631(g), 2632(c)(2)(A)&(B) 2633(c), 2636(f); Consent Judgment
22 ¶ 7.6.a.) During Mr. Speth's review of the Annual Status Report covering
23 the period from July 1, 2013 through June 30, 2014, Mr. Speth determined
24 that on January 21, 2014, the annular sensor at Police Station North failed to
25 alarm when placed in water. (Speth Decl., ¶¶ 36-37; Exh. 37.)

- 26 • **Failure to Ensure Designated Operator Conducts Training.** (Violation
27 of Cal. Code Regs., tit. 23, § 2715(f); Consent Judgment Paragraph 7.5.b.)
28 During Mr. Speth's inspection on August 7, 2014, he observed Long
Beach's verification inspection of the UST systems at Fire Station #14 and
Fire Training Academy. During that inspection, he reviewed the designated
operator training records on site for each facility and observed that both of
the records were not site specific in that they were the records for the
Shoreline Marina and not Fire Station #14 and not Fire Training Academy.
(Speth Decl., ¶¶ 38-40; Exhs. 38-39.)

- **Failure to Timely Perform Annual Certification of Monitoring
Equipment.** (Violation of Cal. Code Regs., tit. 23, § 2638; Consent
Judgment ¶ 7.2.a.) On January 18, 2013 Mr. Speth observed the Annual
Monitoring Certification performed by A.W. Associates Inc. and reviewed
the UST records on site at Fire Station # 16 to determine whether the Annual
Monitoring Certification was performed within 12 months of the prior
certification on January 9, 2012. Additionally, Mr. Speth reviewed the
Annual Status Reports covering the period from July 1, 2013 through June
30, 2014 for 9 additional UST facilities to determine if the Annual
Monitoring Certification was conducted within the 12 month requirement.
Mr. Speth determined that at all 10 facilities the Annual Monitoring
Certification was conducted late. The number of days past the annual
deadline included 1 day late, 9 days late, 12 days late, 13 days late, 15 days
late and 18 days late. (Speth Decl., ¶¶ 41-51; Exhs. 40-59.)

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- **Failure to Timely Perform Annual Spill Containment Structure Testing.** (Violation of Health & Saf. Code, § 25284.2; Consent Judgment ¶ 7.2.a.) During Mr. Speth's inspections and review of the Annual Status Reports provided by Long Beach for the period from July 1, 2013 through June 30, 2014 as well as the on site records reviewed on January 18, 2013 at Fire Station # 16, Mr. Speth determined that Long Beach failed to comply with this requirement at the same 10 UST facilities as set forth in the prior violation description. This spill containment requirement applies to an owner or operator of an underground storage tank with a spill containment structure to annually test the spill containment structure to determine that it is capable of containing the substance until it is detected and cleaned up. The test is commonly referred to as the "spill bucket" or "spill containment" test. The number of days past the annual deadline for conducting the test ranged from 1 day late, 5 days late, 12 days late, 13 days late, 15 days late, to 18 days late. (Speth Decl., ¶¶ 52-62; Exhs. 41-60.)

Each one of these eight types of violations constitutes Suspended Penalty Conduct and gives rise to imposition of the entire suspended penalty amount of \$2.5 million as provided in Paragraph 4.4. of the Consent Judgment and Paragraphs 7.2, 7.4, 7.5 and 7.6.

II. IMPOSITION OF SUSPENDED PENALTIES IS REQUIRED BY THE CONSENT JUDGMENT

When Long Beach entered into the Consent Judgment, it was ably represented by the City's Attorney's Office. In exchange for avoiding significantly more monetary liability and the costs of a prolonged litigation, Long Beach agreed to a number of provisions. One provision was that suspended penalties would be imposed if Long Beach engaged in Suspended Penalty Conduct even on a *single occasion*. (Speth Decl., Exh. 2, ¶ 4.4.b.) Long Beach also expressly acknowledged that "the resolution embodied in [the] Consent Judgment is fair and reasonable..." (Speth Decl., Exh. 2, page 2, lines 18-19.) Moreover, Long Beach conceded that it "does not deny responsibility for the violations alleged in the Complaint" (Speth Decl., Exh. 2), and expressly waived its right to assert substantial performance as a defense to this enforcement motion to impose suspended liability. (*Id.* ¶ 4.4. b.) Long Beach publicly recognized the severity of its conduct and the threat its violations posed to the environment as expressed in the full-page newspaper advertisement, which stated "[f]rom 1998 through April 2007, the City failed to comply with secondary containment testing and repair requirements. [...] [T]he City acknowledges the seriousness of this issue and the potential for considerable adverse impact to the environment." (A copy of the advertisement is attached as Exhibit B to the Consent Judgment

1 (Speth Decl., Exh. 2, Exh. B). Long Beach is deemed to have fully understood the consequences
2 of having even one violation of Paragraphs 7.2 through 7.7 and agreed to those consequences.

3 Moreover, the suspended penalty amount of \$2.5 million represents the penalties that the
4 Court has *already imposed* on Long Beach for its pervasive violations alleged in the Complaint
5 that occurred prior to January 1, 2008. The suspended penalty does not represent additional
6 penalties imposed for the post-Consent Judgment conduct that now gives rise to the imposition of
7 the suspended liability. The conduct identified here simply triggers the collection or assessment
8 of those previously imposed penalties. Any argument by Long Beach that the suspended penalty
9 amount is excessive given the nature and extent of the Suspended Penalty Conduct that gives rise
10 to the imposition of liability is misplaced and must be disregarded.

11 In addition to the Suspended Penalty Conduct, the State Water Board has identified at least
12 **80 other instances** of violations of underground storage tank statutes and regulations. (Speth
13 Decl., ¶18, Exh. 4.) These constitute additional violations of statutes and regulations that can be
14 brought in a separate civil lawsuit. These additional violations are set forth to illustrate the extent
15 to which Long Beach has failed to comply with the terms of the Consent Judgment.

16 **III. THE PARTIES MET AND CONFERRED**

17 As required by Paragraph 19 of the Consent Judgment, the State Water Board met and
18 conferred with Long Beach prior to filing this motion regarding its Suspended Penalty Conduct
19 and other violations of Paragraph 7.1 of the Consent Judgment. The Parties met in person on July
20 22, 2014, August 19, 2014 and October 6, 2014 at the Attorney General's Office in Los Angeles
21 and negotiated in good faith in an effort to resolve the dispute. The Parties, however, were unable
22 to resolve the matter without judicial intervention.

23 **V. CONCLUSION**

24 Long Beach's violations that gave rise to the State Water Board's initial enforcement action
25 and the Consent Judgment included pervasive and egregious violations of the construction,
26 operation and maintenance requirements concerning the storage of hazardous substances in USTs
27 at each of the City's then existing 40 UST facilities that occurred on or before January 1, 2008.
28 Long Beach faced significant civil penalties from its conduct and voluntarily agreed to the terms

1 provided for in the Consent Judgment as resolution of its UST violations and stipulated that the
2 terms of the Consent Judgment were fair and reasonable.

3 The Consent Judgment imposed \$6 million in civil penalties, of which \$2.5 million was
4 suspended conditioned on the City maintaining strict compliance with the injunctive relief
5 provisions set forth in Paragraphs 7.2 through Paragraphs 7.7 of the Consent Judgment for a
6 period of five years. Long Beach agreed that if it engaged in Suspended Penalty Conduct during
7 that five year period *on a single occasion*, the suspended penalty of \$2.5 million *shall be assessed*
8 *in its entirety* and the Court shall have no discretion to reduce or otherwise modify the amount of
9 the penalty.

10 Long Beach has engaged in Suspended Penalty Conduct on 40 occasions, each of which
11 separately gives rise to imposition of the entire suspended penalty amount. The State Water
12 Board has also identified 80 other instances where the City has violated the general injunctive
13 provision in Paragraph 7.1 of the Consent Judgment, which support the State Water Board's
14 motion to the extent that they illustrate the degree to which the City has failed to comply with the
15 injunctive terms in the Consent Judgment.

16 In accordance with the Parties' agreement that this Court shall assess the entire suspended
17 penalty upon a finding that Long Beach has engaged in Suspended Penalty Conduct on a single
18 occasion, the State Water Board respectfully requests that this Court impose the full suspended
19 penalty amount against Long Beach in accordance with the express terms of the Consent
20 Judgment.

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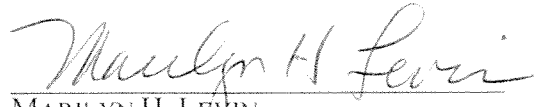
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Dated: December 23, 2014

Respectfully Submitted,

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