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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9

10 GARY LUNSFORD,

11 Plaintiff,

12 vs.

13 ARROWHEAD BRASS  
14 PLUMBING and ARROWHEAD  
15 BRASS & PLUMBING, LLC,

16 Defendants.  
17

**Case No. 2:16-cv-08373-PA**

**DECLARATION OF EVAN J.  
SMITH, ESQUIRE IN SUPPORT OF  
PLAINTIFF'S MOTION TO ENTER  
CONSENT DECREE**

Date: July 9, 2018

Time: 1:30 PM

Location: First Street Courthouse, 350  
W. 1st Street, Courtroom 9A,

Complaint Filed: November 10, 2016

18 I, Evan J. Smith, declare:

19 1. I am an attorney, duly licensed and admitted to practice law in the  
20 State of California. I am a partner in the law firm of Brodsky & Smith, LLC, counsel  
21 for Plaintiff Gary Lunsford. I have personal knowledge of the facts set forth in this  
22 Declaration. If called upon and sworn as a witness, I could and would  
23 competently testify to these facts.

24 **STATEMENT OF FACTS**

25 2. Plaintiff, Gary Lunsford is a citizen of the State of California and  
26 brought this citizen enforcement action against Defendants Arrowhead Brass  
27 Plumbing and Arrowhead Brass & Plumbing, LLC (“Defendants” or “Arrowhead”),  
28

1 pursuant to the CWA, to stop the illegal discharges of stormwater runoff from  
2 Defendants' industrial operations at its plumbing and supply foundry in Los  
3 Angeles, California (the "Facility").

4 3. In 2011, Defendants first sought and obtained coverage under  
5 California's Stormwater Permit ("IGP"), which is ongoing. The IGP requires  
6 Defendants to test their stormwater discharges for (i) pH; (ii) Oil & Grease ("O&G");  
7 (iii) TSS; and (iv) Total Aluminum; (v) Total Iron; (vi) Total Zinc; (vii) Total  
8 Copper; and (viii) Nitrate plus Nitrite Nitrogen. *Id.* The IGP requires Defendants  
9 to collect a total of four (4) stormwater samples during an annual reporting period.

10 4. Plaintiff's investigation determined that stormwater discharges at the  
11 Facility contained impermissibly high levels of Aluminum, Copper, Zinc, Iron, in  
12 the 2011-2012, 2014-2015, and 2015-2016 annual reporting periods, as well as  
13 impermissibly high levels of Nitrate plus Nitrite Nitrogen in the 2011-2012 and  
14 2015-2016 annual reporting periods. Additionally, Defendants failed to adequately  
15 test the proper amount of QSEs and to test for all required NAL pollutants. Notably,  
16 Defendants failed to test for any pollutants whatsoever in the 2012-2013 and 2013-  
17 2014 annual reporting periods, and only tested one QSE in the 2015-2016, 2014-  
18 2015, and 2011-2012 annual reporting periods, instead of the required four or two  
19 QSEs as applicable.

### 20 **PROCEDURAL HISTORY**

21 5. On August 22, 2016, Plaintiff sent his Notice of Violation to  
22 Defendants and the requisite Federal and California State governmental entities. On  
23 November 10, 2016, Plaintiff filed the instant Complaint in this Court. [Dkt. 1]. On  
24 January 31, 2017, Defendants filed their amended SWPPP. On March 24, 2017,  
25 Defendants filed their Answer to Plaintiff's Complaint. [Dkt 17].

26 6. On October 12, 2017, the parties engaged in a mediation during which  
27 the parties agreed to the principal terms of the resolution. On November 28, 2017,  
28 the Court held a telephonic status conference in which the parties informed the court

1 that they had reached an agreement in principal to settle the action, the relevant terms  
2 of which was read into the record, and which parties agreed to reduce to a writing.  
3 [Dkt. 41]. Thereafter, at the hearing, the Court dismissed the action without  
4 prejudice, while retaining jurisdiction until January 28, 2018. [Dkt. 42].

5 7. On January 17, 2018, the parties filed a Notice of Signed Proposed  
6 Consent Decree and 45-Day Federal Agency Review Period [Dkt. 43]. On January  
7 18, 2018, Counsel for the Parties submitted a Stipulation to Extend the Court’s  
8 Jurisdiction for sixty days [Dkt. 44]. On January 22, 2018, this Court granted the  
9 Parties’ Joint Stipulation to extend jurisdiction during the federal agency review  
10 period until March 23, 2018. Thereafter, the Department of Justice (“DOJ”) raised  
11 issues with the proposed consent decree and an amended Consent Decree was  
12 entered into by and between the Parties. The RPCD was provided to the Department  
13 of Justice on March 9, 2018. The DOJ indicated it required a further 45 days to  
14 review the revised Consent Decree. On March 13, 2018, this Court issued an Order  
15 granting the Parties’ Joint Stipulation and extending the Court’s retention of  
16 Jurisdiction for Forty-Five days, or until May 7, 2018 [Dkt. 48].

17 8. On April 6, 2018, Counsel for the Parties received an e-mail from the  
18 DOJ indicating that its review of the RPCD in this matter was not yet complete, and  
19 indicating it would require even more additional time to complete its review  
20 process. On April 11, 2018, Counsel for the Parties submitted a Second Joint  
21 Stipulation to Extend the Court’s Retention of Jurisdiction for Twenty-One Days  
22 [Dkt. 49]. On April 11, 2018, this Court extended the Court’s Jurisdiction until May  
23 28, 2018 [Dkt 50].

24 9. On May 18, 2018, the DOJ filed a Statement of Concern and  
25 Recommendation that Plaintiff File a Motion to Enter the Proposed Consent Decree  
26 (“Statement of Concern”). [Dkt 51]. On May 22, 2018, the parties filed a Third Joint  
27 Stipulation to Extend the Court’s Retention of Jurisdiction [Dkt. 52]. On May 22,  
28 2018, this Court issued an Order extending jurisdiction and setting a briefing

1 schedule for the filing of Plaintiff’s Motion to Enter the Proposed Consent Decree  
2 [Dkt. 53]. Plaintiff now submits his motion to enter the [Proposed] Consent Decree.

3 **LEGAL ARGUMENT**

4 **No payment to Plaintiff**

5 10. Plaintiff supplied the DOJ with an initial proposed Consent Decree  
6 (“IPCD”) on January 18, 2018. The IPCD provided for a payment of \$1,000 to Mr.  
7 Lunsford for his time he spent achieving the results set forth in the IPCD and to  
8 encourage his participation in future environmental enforcement actions.

9 11. After review of the IPCD, the DOJ objected to the language granting  
10 \$1,000 to Plaintiff for obtaining the injunctive relief and to encourage future  
11 environmental enforcement. After several meet and confers, and as a mere  
12 accommodation, Mr. Lunsford agreed to have the \$1,000.00 paid directly by the  
13 Defendant to the University of California as part of the Supplemental Environmental  
14 Project (“SEP”). On February 28, 2018, Plaintiff submitted the RPCD for review.  
15 The RPCD did not change the language regarding monitoring costs and the DOJ had  
16 no previous objection to this provision. Then, for the first time, at a May 14, 2018,  
17 meeting, the DOJ raised concerns that the monitoring provision could be interpreted  
18 as providing money to Lunsford.

19 12. The DOJ was advised at the May 14, 2018 meeting that the Plaintiff  
20 *was not receiving any of the \$15,000.00 inspection costs and that the Consent*  
21 *Decree required a qualified QISP to conduct the future inspection.*

22 13. At the May 14, 2018 meeting with the DOJ and EPA, prior to its  
23 Statement being filed, Plaintiff provided the name and CV of a qualified Expert who  
24 would likely be performing the future monitoring and inspection, as well as an  
25 example of the expected expert costs that would be incurred as a result of the future  
26 monitoring and inspection provision.

27 //

28 //

**Plaintiff’s NOV Issued Upon Arrowhead**

14. Plaintiff advised the DOJ and EPA that prior to the issuance of the Notice of Violation (“NOV”) Plaintiff’s representatives conducted an extensive investigation which included online review of California’s online Storm Water Multiple Application and Report Tracking System (“SMARTS”) database, review of PACER California registration records, review of EPA benchmarks and water quality standards, additional internet investigation, review of National Oceanic and Atmospheric Administration (“NOAA”) rain data, review of records contained at the offices of the Regional Water Quality Control Board (“RWQCB”), and hiring an outside expert to travel to the Facility to inspect and photograph discharge points.

15. Defendants’ self-reporting is contained in the SMARTS database, and was reviewed by both Plaintiff’s counsel and Plaintiff’s expert.

16. Plaintiff’s NOV provides specific detail about Defendants’ permit violations and, in fact, provides the same type of information that is provided in virtually every CWA NOV filed in California by a Citizen Enforcer and the instant NOV is similar to the vast majority of NOVs that have been issued under the CWA in this District for the past 10 years.

17. Plaintiff served the NOV on Defendants on August 22, 2016. The NOV provided 1) substantial detailed allegations regarding Defendant’s alleged unlawful conduct; 2) provided citations to each provision of the IGP, the U.S. EPA 2008 Multi-Sector General Permit for Stormwater Discharges Associated With Industrial Activity (the “2008 MSGP”), and the CWA alleged to have been violated; 3) the identity of those responsible for the violations (Defendants); 4) the dates of the alleged violations (as set forth in the NOV, violations occurred on of each date of a qualified storm event ); and 5) the Plaintiff’s contact information. Similar to the NOV approved by the Ninth Circuit in *AG Indus Mfg.*, the NOV here contains allegations of improper discharges during all dates of rain events in the area of the Facility of a certain intensity, and includes a list of all such dates.

1 18. The NOV was also properly served on all requisite governmental  
2 entities, including the Administrator of the United States Environmental Protection  
3 Agency (“EPA”); the Regional Administrator of EPA Region IX; the Executive  
4 Director of the State Water Resources Control Board (“State Board”); the Executive  
5 Officer of the Regional Water Quality Control Board, Los Angeles Region  
6 (“Regional Board”) (collectively, “state and federal agencies”) and Defendants.

7 19. The NOV also provides specific information regarding the Defendants’  
8 permit violations stemming from the failure to conduct the required stormwater  
9 monitoring/testing. Specifically, the NOV states

10 As a part of the MRP, the Industrial Stormwater Permit specifies that  
11 Facility operators shall collect a total of four (4) stormwater samples  
12 throughout an annual reporting period. Specifically the Industrial  
13 Stormwater Permit requires the discharger to collect and analyze  
14 samples from two (2) Qualifying Storm Events (‘QSE’s) within the  
15 first half of each reporting year (July 1 to December 31), and two (2)  
16 QSEs within the second half of each reporting year (January 1 to June  
17 30).” Industrial Stormwater Permit § XI B(2) ...Furthermore, should  
18 facility operators fail to collect samples from the first storm event of  
19 the wet season, they are still required to collect samples from two other  
20 storm events during the wet season, and explain in the annual report  
21 why the first storm event was not sampled.

22 Despite this requirement Arrowhead Brass has submitted the annual  
23 report for the 2013-2014 and 2012-2013 reporting periods with no  
24 testing data whatsoever, and submitted the annual report for the 2015-  
25 2016, 2014-2015, and 2011-2012 reporting periods with testing data  
26 from only one (1) QSE. Additionally, Arrowhead Brass has failed to  
27 adequately explain why such sampling was not included.

28  
**Injunctive Relief**

29 20. All of the injunctive relief in the RPCD is aimed specifically at reducing  
30 the pollutant levels in the stormwater discharged from the Facility, and is geared  
31 toward compliance with the IGP - the exact relief Plaintiff sought when serving the  
32 NOV and filing the Complaint.

1           21. Plaintiff filed the Complaint on November 10, 2016. As a result of the  
2 Complaint, on January 31, 2017, Arrowhead’s QISP issued an updated SWPPP. The  
3 updated SWPPP included the following revisions (more fully described in the  
4 updated SWPPP) intended to reduce the pollutants in their stormwater:

5                   Creation of Second Discharge Point

6           The Updated SWPPP adds a second Discharge Point  
7 (“DP2”) to the Facility. DP2 is reflected both in narrative  
8 description in several sections of the Updated SWPPP as  
9 well as being readily identified in the Facility Site Map  
10 included in the Updated SWPPP.

11                   Revisions to Assessment of Potential Pollutant Sources

12           The Updated SWPPP amends and revises its Assessment  
13 of Potential Pollutant Sources to reflect the narrative  
14 description of the potential pollutants that could result  
15 from several areas of the Facility, the industrial activities  
16 that take place therein, and what BMPs have been put in  
17 place to address them. The following changes were  
18 made, in both narrative form and in Table 3 addressing  
19 these issues: (i) the removal of a previously installed  
20 Aqueous Machine Parts Cleaner; (ii) the renaming of the  
21 “Component Part Storage” area to the “Cutting Oil and  
22 Used Oil Storage” area to more adequately describe the  
23 purpose and industrial processes occurring therein; and  
24 (iii) the addition of a “Pre-Assembly Area” and potential  
25 pollutant sources resulting therein from the industrial  
26 process of soldering, including Nitrate plus Nitrite  
27 Nitrogen and Metal Particulates, and that the BMPs of  
28 sweeping and inspections were implemented to address  
such potential pollutants in this area of the Facility.

Revision of the Sampling and Analysis Section

          The Updated SWPPP includes major revisions to its  
Sampling and Analysis Section, including a more  
accurate description of each discharge point, including  
the newly created DP2. Specifically, the following new

1 procedures and information was added to the Updated  
2 SWPPP: (i) information on the industrial activities in  
3 close proximity to each discharge point; (ii) information  
4 regarding the physical characteristics of each discharge  
5 point; (iii) information regarding the BMPs implemented  
6 near each discharge point to address applicable potential  
7 pollutants.

8 In addition the Updated SWPPP also lists all pollutant  
9 parameters considered impairments to the receiving  
10 water body to which stormwater discharges from the  
11 Facility Flow, and whether such pollutant parameters are  
12 present at the Facility. Notably, this section lists (i)  
13 Copper, (ii) Zinc, (iii) Copper (dissolved), (iv) Nitrate,  
14 Nitrite, total Nitrogen, (v) oil, and (vi) pH, as “present at  
15 the facility” and thus required to be included in the  
16 Facility’s Sampling and Analysis program, in addition to  
17 any other sampling required pursuant to the IGP  
18 (notably, Copper (dissolved) was not previously included  
19 in this regimen, but was added as a result of the Updated  
20 SWPPP).

21 The Updated SWPPP also makes note that the Facility is  
22 in Level 1 for Nitrate + Nitrite, Aluminum, Copper, Iron,  
23 and Zinc based upon results from storm water sampling  
24 for the year 2015-2016.

25 Revision to Table 1: Inventory of Industrial Materials  
26 Stored or Handled on Site

27 The Updated SWPPP revises the above referenced Table  
28 to include information that the materials of “Filter Cake  
Sludge – F006” and “Slag” are shipped to the Facility.

Revisions to the Pollution Prevention Team

The Updated SWPPP revises the Pollution Prevention  
Team to reflect updates in personnel assigned to the  
Pollution Prevention Team.

Revisions to the Storm Drain System Description



1  
2 The Updated SWPPP includes additional information  
3 regarding the physical characteristics of the Facility  
4 including the nature of the neighboring facility from  
5 which stormwater run-on occurs, the percentage of  
6 imperviousness of the Facility, and the amount of  
7 acreage of industrial materials exposed to precipitation.

8  
9  
10 Revisions to Sample Chain-of-Custody Form

11 The Updated SWPPP includes the Facility address on the  
12 sample chain-of-custody form.

13  
14 Revisions to Company Name

15 The Updated SWPPP revised the Company name to  
16 reflect a merger transaction as between Arrowhead and  
17 Champion Irrigation.

18 22. While Plaintiff believed this injunctive relief was substantial and would  
19 bring the Facility closer to compliance with the IGP and CWA, Plaintiff still required  
20 a site inspection to determine advanced BMPs would be required to reduce  
21 Defendants' stormwater pollutants and achieve full compliance with the IGP and  
22 CWA. On October 27, 2017, Plaintiff's expert conducted a thorough site inspection  
23 of the Facility. Following the site inspection, Plaintiff's expert recommended  
24 several additional BMPs to further reduce pollutants in stormwater discharges at the  
25 Facility and achieve full compliance with the IGP and CWA. These additional  
26 BMPs, read into the record at the last status conference, are not in the Defendants  
27 revised SWPPP and are to be implemented upon entry of the RPCD. They are  
28 specifically stated in § III of the RPCD (pps. 10-13) as follows:

29 Additional BMP 1 – Baghouse Dust Collection

30 Arrowhead will ensure that the connection between the  
31 baghouse dust collector and the drums are sealed and that  
32 BMPs are employed related thereto. Maintenance logs  
33 will be kept for events related to dust collector

1 maintenance including changing the filter cartridges and  
2 ensuring that the connection between the dust collector  
3 and the containers are sealed after every quarterly  
4 container change-out event. Maintenance log notes will  
5 be kept indicating that all connections between the dust  
6 containers and the drop chutes of the dust collector are  
7 sealed and secured. Additionally, monthly BMP  
8 inspections include verifications that all container  
9 connections are sealed and secured. The contents of the  
10 containers are managed and disposed of in accordance  
11 with all applicable state and federal regulations. The  
12 SWPPP will be amended to include the above  
13 descriptions in the appropriate BMP sections.

14 Arrowhead will purchase a HEPA Wet/Dry Shop  
15 Vacuum, the dust collector area will be HEPA-vacuumed  
16 and wet mopped after each Dust Collector maintenance  
17 event (on an as-needed basis) or quarterly container  
18 change-out. In addition, the area will be observed daily  
19 and vacuumed as needed. Monthly BMP inspection  
20 documentation forms will be used to document the  
21 implementation and maintenance of this BMP. The  
22 Facility SWPPP will be revised as needed to reflect these  
23 changes. During the interim, whenever maintenance is  
24 performed on the unit or material is removed, the  
25 containment area will be thoroughly swept.

#### 26 Additional BMP 2 – Roof Sweeping

27 Arrowhead will engage in weekly inspections of the  
28 rooftop over the Facility, and sweep it no less than  
monthly, unless a weekly inspection reveals the need for  
additional sweeping. The Facility's SWPPP will be  
revised to reflect this additional BMP.

#### 29 Additional BMP 3 – East Yard

30 Arrowhead will discontinue the use of the plating line  
31 adjacent to the East Yard beginning on January 1, 2018.  
32 The existing plating line permit will remain in effect,  
33 although actual use will be dormant. If the plating line is

1 restarted in the future (under the existing permit),  
2 Arrowhead Brass will implement “housekeeping” BMPs  
3 (e.g., inspections, vacuuming, maintenance logs, etc.).

4 Additional BMP 4 – Shipping Area

5 Arrowhead will clean the shipping area daily after each  
6 work shift with a HEPA shop vacuum and include this  
7 area in a daily sweep log. In addition to the  
8 aforementioned sweeping, daily observations should be  
9 sufficient to ensure the protection from releases into  
10 storm water run-off from this area. Daily sweep logs of  
11 this and other areas of the facility will be added to the  
12 SWPPP and the BMP descriptions for Good  
13 Housekeeping will be revised accordingly.

14 Additional BMP 5 – Materials

15 Arrowhead produces castings from purchased alloy  
16 ingots made of ASTM alloy C83470. According to the  
17 C83470 specifications provided by the Copper  
18 Development Association, Inc., this material contains  
19 lead (Pb) at 0-0.09% by weight and aluminum (Al) at 0-  
20 0.01% by weight. Therefore, Pb and Al are present only  
21 in trace amounts as impurities. This content is not  
22 significant enough to impact storm water quality. Yet,  
23 since Arrowhead is required to sample Al based on their  
24 Standard Industrial Classification (“SIC”) code, the  
25 company will continue to sample for Al. However, due  
26 to the relevant information outlined above, Arrowhead  
27 will not analyze storm water samples to determine  
28 concentrations of lead and the sampling and analysis  
program for Arrowhead will not change. In the event  
Arrowhead changes to an alloy that is not lead free,  
Arrowhead will supplement its testing to include testing  
for lead and will revise the SWIPP accordingly.

23. The RPCD provides for similar relief as numerous other court approved  
CWA consent decrees, all of which were unopposed by the DOJ.

24. Plaintiff submitted the RPCD to the DOJ. In its January 30, 2018

1 response, the DOJ requested a letter from the organization that was going to receive  
2 the funds. The DOJ specifically set forth what was required in the letter. Plaintiff's  
3 counsel contacted Laura Fandino, Director, Science and Sustainability Programs at  
4 UCSDES, and requested that she send the required letter to the DOJ. On March 1,  
5 2018, Ms. Fandino did exactly that. The letter addressed with specificity how the  
6 funds would be utilized and answered each of DOJ's questions.

7 25. Intentionally Omitted.

8 26. Following multiple letters and telephone conversations, the production  
9 of thousands of pages of documents, an amended Consent Decree, multiple  
10 extensions of time sought by the DOJ, and an in-person meeting, it is clear to  
11 Plaintiff that the DOJ did not have concerns with this RPCD, but instead, with the  
12 overall number of NOV's that Plaintiff's counsel had sent.

13 27. Plaintiff's counsel has issued this number of NOV's because of the size  
14 of the problem. Due to meager prior enforcement, a large number of facilities in the  
15 Los Angeles area either have numerous CWA Permit violations, or have failed to  
16 even obtain permit coverage to discharge pollutants when required.

17 28. Each of Plaintiff's counsel's NOV's issued on behalf of its clients  
18 were sent to all requisite governmental agencies, including the EPA, providing them  
19 with notice of Plaintiff's counsel's clients' concerns. There is no prohibition as to  
20 how many NOV's a citizen enforcer can issue. The facilities at issue are close to  
21 where these citizen enforcers' live, work, and recreate. Next, some of counsel'  
22 clients live at the same address because they are members of the same immediate  
23 family.

24 29. Brodsky & Smith, LLC has been in existence for 20 years and has been  
25 appointed class counsel in this District Court, and across the country, and has  
26 achieved enormous success in several areas of the law.

27 30. While Plaintiff's counsel has issued 158 NOV's on behalf of 38  
28

1 different clients over a two-year period, it has only filed 18 CWA citizen lawsuits  
2 during this time. While only 18 different cases were filed, one case was  
3 administratively closed and reopened by the Court with a different case number  
4 making it appear that 19 were filed. The filing of 18 lawsuits over a two year period  
5 is not overtaxing on Brodsky & Smith, LLC.

6 31. Notice of three private settlements in three prior CWA lawsuits was not  
7 provided to the Law and Policy Section because these three cases were (i) not settled  
8 by consent decree and (ii) did not bind the United States or any non-party to the  
9 litigation. A private settlement between the parties is not a court ordered consent  
10 decree, and therefore, does not require notice.

11 32. While the governmental agencies may have chosen to not pursue the  
12 NOVs, in the majority of the instances, the NOVs met their intended purpose. They  
13 gave the alleged violator the opportunity to take action and become compliant with  
14 the Permit. In the majority of the NOVs issued, the alleged violators either became  
15 compliant with the Permit, made the required regulatory filing, or put in place BMPs  
16 to reduce the pollutants in their stormwater discharges. This was accomplished  
17 without a consent decree, settlement agreement, or the alleged violator paying any  
18 monies either to the citizen enforcer or to Plaintiffs' counsel.

19 **Economic Components in RPCD Are Appropriate and Justified**

20 33. While Plaintiffs' counsel are often asked to justify their fees in other  
21 contexts, no previous pleading from the DOJ could be found making a similar  
22 request of any other CWA citizen suit enforcer.

23 34. Plaintiff has provided this court with four CWA consent decrees that  
24 have been approved by this District within the past two and a half years without  
25 motion practice. These approved CWA consent decrees had attorneys' fees and  
26 costs, compliance and monitoring, and supplemental environmental program  
27 provisions in the aggregate of up to \$448,000.00. Indeed, the attorneys' fees and  
28

1 costs provisions in those consent decrees are not dissimilar and are in excess of the  
 2 instant RPCD provisions.

3 35. The schedule below is a summary indicating the number of hours spent  
 4 by the lawyers at my firm on this litigation, the hourly rate, and the resulting lodestar  
 5 calculation. The schedule was prepared from contemporaneous daily time records  
 6 regularly prepared and maintained by my firm.

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Evan J. Smith (P)	73.4	\$750	\$ 55,050.00
Jason L. Brodsky (P)	12.75	\$750	\$ 9,562.50
Marc Ackerman (P)	61.1	\$750	\$ 45,825.00
<u>Ryan P. Cardona (A)</u>	<u>123.6</u>	<u>\$395</u>	<u>\$ 48,822.00</u>
<b>Totals:</b>	<b>269.55</b>		<b>\$159,259.50</b>

13 (P) = Partner

14 (A) = Associate

15 As set forth above, the amount of time spent on this litigation by my firm since the  
 16 inception of this case through the date of June 11, 2018 is 269.55 hours. The total  
 17 lodestar amount is \$158,763.75, based upon my firm’s current hourly rates.

18 36. My firm has expended a total of \$6,843.13 in expenses in connection  
 19 with the prosecution of this litigation as follows:

20 **Costs Incurred**

21 \$ 400.00 Filing Costs

22 \$ 183.30 Service of process costs

23 \$ 5,160.00 Expert Costs

24 \$ 1,099.83 Travel (Mediation) (Flight \$739.39, all other travel - \$360.44))

25 **\$ 6,843.13 Totals**

26 The expense information shown above accurately summarizes information  
 27 contained in the financial records of my firm, kept in the ordinary course of business.

28 37. Plaintiff also will incur additional fees and costs associated with the

1 monitoring and supplemental inspection of at least \$15,000.00 during the term of the  
 2 RPCD, and will only be receiving \$15,000.00 in fees and costs for this work under  
 3 the RPCD. The good faith estimate of prospective fees and costs are as follows:

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Evan J. Smith (P)	20	\$750	\$15,000.00
<u>Ryan P. Cardona (A)</u>	<u>10</u>	<u>\$395</u>	<u>\$ 3,950.00</u>
<b>Total:</b>	<b>30</b>		<b>\$18,950.00</b>

8 (P) = Partner

9 (A) = Associate

10 **Estimated Future Costs**

11 \$1,500.00 Travel costs for inspection

12 \$3,000.00 Expert costs for inspection

13 **\$4,500.00 Totals**

14 38. The total combined attorneys' fees and costs to be paid by Defendants  
 15 under the RPCD is \$91,500.00. This consists of \$76,500.00 for attorneys' fees and  
 16 costs in the litigation to date, and \$15,000.00 for attorneys' fees and costs for future  
 17 compliance and monitoring to be incurred. After subtracting the total costs incurred  
 18 (\$6,843.13) and the future costs to be incurred (\$4,500.00) from the \$91,500.00, the  
 19 actual attorneys' fees being received under the RPCD will be \$80,156.87. This  
 20 results in a *negative* lodestar of 0.45 of the attorneys' fees incurred to date, as well  
 21 as a *negative* lodestar of 0.50 (or half) of the attorneys' fees incurred *and* to be  
 22 incurred. Plaintiff's Counsel took this matter on contingency and have not been paid  
 23 for their work in this matter.

24 39. Plaintiff's counsel's attorneys' time and lodestar in this matter is broken  
 25 down by categories and set forth specifically in Exhibit "36," hereto. *See* ¶ 75 below.

26 40. Attached to this Declaration as Exhibit "1" is a true and correct copy of  
 27 the RPCD which the parties seek entry.

28 41. Attached to this Declaration as Exhibit "2" is a true and correct copy of

1 the Declaration of Plaintiff Gary Lunsford.

2 42. Attached to this Declaration as Exhibit “3” is a true and correct copy  
3 of the NOV issued upon Defendants.

4 43. Attached to this Declaration as Exhibit “4” is a true and correct copy  
5 of Plaintiff’s environmental consultant and QISP, George Caamano of 414 Water,  
6 Inc.

7 44. Attached to this Declaration as Exhibit “5” is a true and correct copy  
8 of the CWA Consent Decree entered by Honorable Deane D. Pregerson on January  
9 11, 2016, in *Los Angeles Waterkeeper v. Community Recycling Resource Center,*  
10 *Inc.*, 2:14-cv-07965-DDP.

11 45. Attached to this Declaration as Exhibit “6” is a true and correct copy  
12 of the CWA Consent Decree entered by Honorable Dolly M. Gee on February 3,  
13 2017, in *Island Empire Waterkeeper v. Robertson’s Ready Mix*, 16-cv-00825-  
14 DMG.

15 46. Attached to this Declaration as Exhibit “7” is a true and correct copy  
16 of the CWA Consent Decree entered by Honorable George Wu on April 20, 2017,  
17 in *Environmental Defense Center v. California Resources Production Corp.*, 16-  
18 cv-02325-GW

19 47. Attached to this Declaration as Exhibit “8” is a true and correct copy  
20 of the Consent Decree entered by Honorable James V. Selna on December 29,  
21 2017, in *Orange County Coastkeeper v. Bristol Industries*, 8:17-cv-00471-JVS.

22 48. Attached to this Declaration as Exhibit “9” is a true and correct copy of  
23 correspondence from UCSDES representative Laura Fandino dated March 1, 2018  
24 to the DOJ regarding the SEP payment in the RPCD.

25 49. Attached to this Declaration as Exhibit “10” is a true and correct copy  
26 of the Declaration of Jesse Murillo.

27 50. Attached to this Declaration as Exhibit “11” is a true and correct copy  
28 of the Declaration of Dean Barwick.



1 51. Attached to this Declaration as Exhibit “12” is a true and correct copy  
2 of the Declaration of Marie Barwick.

3 52. Attached to this Declaration as Exhibit “13” is a true and correct copy  
4 of the Declaration of Aaron Dominguez.

5 53. Attached to this Declaration as Exhibit “14” is a true and correct copy  
6 of the Declaration of Justin Barwick.

7 54. Attached to this Declaration as Exhibit “15” is a true and correct copy  
8 of the firm profile of Brodsky & Smith, LLC.

9 55. Attached to this Declaration as Exhibit “16” is a true and correct copy  
10 of the Notice of Violation dated August 15, 2017 from California Communities  
11 Against Toxics to Trojan Battery Company.

12 56. Attached to this Declaration as Exhibit “17” is a true and correct copy of  
13 the Notice of Violation dated August 2, 2017 of from Our Clean Waters to Calwest  
14 Galvanizing Corporation.

15 57. Attached to this Declaration as Exhibit “18” is a true and correct copy of  
16 the Notice of Violation dated July 24, 2017 of Our Clean Waters to Aircraft X-Ray  
17 Laboratories, Inc.

18 58. Attached to this Declaration as Exhibit “19” is a true and correct copy of  
19 the Notice of Violation dated June 13, 2017 of Center for Community Action and  
20 Environmental Justice to Imperial Pipe Services, LLC.

21 59. Attached to this Declaration as Exhibit “20” is a true and correct copy of  
22 the Notice of Violation dated January 9, 2017 of Orange County Coastkeeper to  
23 Bristol Industries, LLC.

24 60. Attached to this Declaration as Exhibit “21” is a true and correct copy of  
25 the Notice of Violation dated December 20, 2016 of Los Angeles Waterkeeper to  
26 Teknor Apex Company.

27 61. Attached to this Declaration as Exhibit “22” is a true and correct copy of  
28

1 the Notice of Violation dated December 16, 2016 of Orange County Coastkeeper to  
2 Commercial Metal Forming.

3 62. Attached to this Declaration as Exhibit “23” is a true and correct copy of  
4 the Notice of Violation dated June 3, 2016 of Inland Empire Waterkeeper and  
5 Orange County Coastkeeper to Robertson’s Ready Mix, Ltd.

6 63. Attached to this Declaration as Exhibit “24” is a true and correct copy of  
7 the Notice of Violation dated May 17, 2016 of Los Angeles Waterkeeper to Bell  
8 Foundry Co.

9 64. Attached to this Declaration as Exhibit “25” is a true and correct copy of  
10 the Notice of Violation dated April 26, 2016 of Los Angeles Waterkeeper to Davis  
11 Wire Corporation.

12 65. Attached to this Declaration as Exhibit “26” is a true and correct copy of  
13 the Notice of Violation dated January 19, 2016 of Environmental Defense Center to  
14 California Resources Corporation – South Mountain Field.

15 66. Attached to this Declaration as Exhibit “27” is a true and correct copy of  
16 the Notice of Violation dated October 8, 2014 of Center for Community Action and  
17 Environmental Justice to Tamco.

18 67. Attached to this Declaration as Exhibit “28” is a true and correct copy of  
19 the Notice of Violation dated May 8, 2013 of California Communities Against  
20 Toxics to Calment Services, Inc.

21 68. Attached to this Declaration as Exhibit “29” is a true and correct copy of  
22 the Notice of Violation dated August 22, 2012 of Ventura Coastkeeper and the  
23 Wishtoyo Foundation to GenOn Energy, Inc. and affiliated entities.

24 69. Attached to this Declaration as Exhibit “30” is a true and correct copy of  
25 the Notice of Violation dated March 22, 2012 of Santa Monica Baykeeper to C & M  
26 Metals Inc.

27 70. Attached to this Declaration as Exhibit “31” is a true and correct copy of  
28

1 the Notice of Violation dated February 23, 2012 of Environmental Defense Center  
2 to Vintage Production California LLC.

3 71. Attached to this Declaration as Exhibit “32” is a true and correct copy of  
4 the Notice of Violation dated April 20, 2011 of Ventura Coastkeeper and the  
5 Wishtoyo Foundation to Tri-County Auto Dismantlers, Inc.

6 72. Attached to this Declaration as Exhibit “33” is a true and correct copy of  
7 the Notice of Violation dated October 26, 2010 of Ventura Coastkeeper and the  
8 Wishtoyo Foundation to E.J. Harrison & Sons, Inc. and associated entities.

9 73. Attached to this Declaration as Exhibit “34 is a true and correct copy of  
10 the Notice of Violation dated October 14, 2010 of Communities for a Better  
11 Environment to Mike’s Industries, Inc. a/k/a Mike’s Foreign Auto Parts.

12 74. Attached to this Declaration as Exhibit “35” is a true and correct copy of  
13 the Notice of Violation dated June 10, 2009 of Orange County Coastkeeper and  
14 Inland Empire Waterkeeper to D&M Metals.

15 75. Attached to this Declaration as Exhibit “36” is a true and correct copy of  
16 a chart breaking down by categories Plaintiff’s Counsel’s time and lodestar in this  
17 matter which is taken from contemporaneous time records.

18 I declare under penalty of perjury that the foregoing is true and correct, and  
19 that this Declaration was executed this 11<sup>th</sup> day of June, 2018.

20 s/ Evan J. Smith  
21 Evan J. Smith