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ENDORSED
FILED
ALAMEDA COUNTY

JAN 11 2008

CLERK OF THE SUPERIOR COURT
By HOLLIE M. ADAMIC
Deputy

9 Attorneys for Defendant
10 SHELL OIL COMPANY

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA,

15 Plaintiff,

16 v.

17 ANDY SABERI, SHELL OIL CO., INC., a
18 corporation, PAWAN K. GARG and SOM D.
19 GUPTA

20 Defendants.

CH
Case No. 184353-6
Hon. Robert Freedman

~~PROPOSED~~ ORDER MODIFYING THE
STIPULATED FINAL JUDGMENT
ENTERED JUNE 22, 1995

Related Case: *Saberi v. Shell Oil Co., Garg
and Gupta*, Alameda Superior Court Case
No. C-821274

[PROPOSED] ORDER

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Having reviewed the Stipulation entered into by and among Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appearing through its attorneys, Thomas J. Orloff, District Attorney of the County of Alameda, and Lawrence C. Blazer, Assistant District Attorney, acting pursuant to the statutory law of the State of California, and Defendants ANDY SABERI, appearing through his attorneys William H. Paynter and Xavier Lavoipierre; SHELL OIL COMPANY, appearing through its attorneys, Caldwell Leslie & Proctor, PC, Michael R. Leslie; PAWAN K. GARG and SOM D. GUPTA, appearing through their attorneys, Law Offices Of Moss & Murphy, Glen L. Moss, and Poeschl Kohn & Epstein LLP, Dorine Kohn (collectively "the Parties"), and filed with this Court on December 26, 2007, and good cause appearing therefore, the Court hereby ORDERS that the Stipulated Final Judgment entered on June 22, 1995, a copy of which is attached hereto as Exhibit "A" and incorporated by reference is modified as follows:

1. Paragraph 8(A), second sentence, which currently states: "SHELL OIL COMPANY, through its environmental engineers, will assume the responsibility of administering the corrective action and remediation;" shall be modified to state: "ANDY SABERI, through his environmental engineers, will assume the responsibility of administering the corrective action and remediation." Saberi's responsibilities shall include, but are not limited to, all of the tasks described in Paragraph 8(A) and its subparts.
2. Shell is hereby relieved of its obligations under Paragraph 8(A) and its subparts to administer and/or finance the corrective action and remediation.
3. In the event of a material default by Saberi in fulfilling his obligations under Paragraph 8(A) of the Judgment as modified by this Stipulated Order, Plaintiff shall take the steps provided in Paragraph 12(A) of the Judgment to provide written notice to all Parties of the default and to allow Saberi the time allotted to correct or otherwise resolve the default to the satisfaction of Plaintiff. In the event that Saberi fails to correct or otherwise resolve the default to the satisfaction of Plaintiff, upon a written notice to all

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PROCTOR

1 Parties and a showing to the Court's satisfaction that Saberi has materially breached his
2 obligations under Paragraph 8(A) of the Judgment as modified by this Stipulated Order,
3 Plaintiff may then direct that Shell take over the obligation to administer the corrective
4 action and remediation. In such an event, Shell reserves all of its rights, including those
5 rights against Saberi pursuant to that Settlement Agreement entered into between Shell
6 and Saberi in October 2007.

7 4. Paragraph 8(B), first sentence, of the Judgment which currently states:
8 "Defendants PAWAN K. GARG and SOM D. GUPTA, shall maintain the premises at
9 1230-Fourteenth Street so that the site is neither an eyesore nor a fire risk;" shall be
10 modified to state: "ANDY SABERI shall maintain the premises at 1230-Fourteenth
11 Street so that the site is neither an eyesore nor a fire risk." Saberi's responsibilities
12 include, but are not limited to, all of the tasks described in Paragraph 8(B) and its
13 subparts.

14 5. Defendants Garg and Gupta are hereby relieved of all obligations under the
15 Judgment, including but not limited to, the obligation set forth in Paragraph 8(B) and its
16 subparts to maintain the premises at 1230 Fourteenth Street.

17 6. Paragraph 8(B)(vi) which currently states: "If the owner of the property,
18 defendant, ANDY SABERI, or the COUNTY OF ALAMEDA are dissatisfied with the
19 service provided by the retained maintenance contractor, either party shall contact counsel
20 for defendants SOM D. GUPTA and PAWAN K. GARG, and counsel for said defendants
21 will arrange to retain the services of another contractor;" shall be stricken in its entirety.

22 7. Paragraph 8(C) which currently states: "Defendant SHELL OIL CO., INC., shall
23 take all reasonable steps to keep the public informed of developments on the site;" shall
24 be modified to state: "Defendant ANDY SABERI shall take all reasonable steps to keep
25 the public informed of developments on the site." Saberi's responsibilities shall include,
26 but not be limited to, the steps detailed in Paragraph 8(C) and its subparts.

27 8. Defendant Shell is hereby relieved of all responsibilities under Paragraph 8(C) and
28 its subparts.


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9. Paragraph 8(D) shall be stricken in its entirety.

10. Nothing in this Order shall expand the responsibilities of any Party beyond those set forth in the Stipulated Final Judgment entered on June 22, 1995.

IT IS SO ORDERED.

DATED: JAN 11, 2008


The Honorable Robert Freedman
Judge of the Superior Court

ENDORSED
FILED
ALAMEDA COUNTY

JUN 22 1995

RONALD G. OVERHOLT, Exec. Off./Clerk
By Mattie Rogers

1 THOMAS J. ORLOFF
District Attorney
2 Alameda County
MICHEAL O'CONNOR
3 Deputy District Attorney
State Bar Number: 124655
4 Consumer & Environmental Protection Division
7677 Oakport Street, Suite 400
5 Oakland, CA 94621
(510) 569-9281

6 Attorneys for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

9 THE PEOPLE OF THE STATE OF
10 CALIFORNIA,

11 Plaintiff,

12 v.

13 ANDY SABERI,
SHELL OIL CO. INC., a corporation,
14 PAWAN K. GARG, SOM D. GUPTA,

15 Defendants.

H-184353-6
Docket No.

STIPULATED FINAL JUDGMENT

16 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appearing through its attorneys,
17 Thomas J. Orloff, District Attorney of the County of Alameda, and Micheal O'Connor, Deputy District
18 Attorney of the County of Alameda, acting pursuant to the statutory law of the State of California, and
19 Defendants, and ANDY SABERI, appearing through his attorney, William Paynter, SHELL OIL CO.
20 INC., a corporation, appearing through its attorney, Larson & Burnham, Paul Caleo, and PAWAN K.
21 GARG and SOM D. GUPTA, appearing through their attorneys, Ropers, Majeski, Kohn, Bentley,
22 Wagner & Kane, Raymond Swope and Camerlengo & Johnson, Moira C. McQuaid, without the taking
23 of proof, and without a trial or adjudication of any facts or law herein, and without any admission of
24 liability by defendants, or any of them, hereby stipulate in compromise and settlement of this action that:

25 1. Defendants have been served with copies of the complaint herein and acknowledge that
26 the Superior Court, County of Alameda, has personal jurisdiction over defendants and jurisdiction over
27 the subject matter of this action.
28

1 2. Final judgment shall be entered on plaintiff's complaint in accord with the terms herein
2 and plaintiff hereby waives and releases any further claims arising out of, relating to, or which may have
3 been asserted as a result of the acts, omissions, transactions, or matters relating thereto, concerning the
4 matters alleged in the complaint.

5 3. The execution of this stipulation is the result of negotiation and compromise within the
6 meaning of California Evidence Code Sections 1152, *et. seq.* Plaintiff and defendants agree that neither
7 this stipulation, nor the entry into this stipulation, nor any performance under this stipulation, shall be
8 construed as a finding or admission of any fact or allegation contained in the complaint or in this
9 stipulation, or of any liability, or admission by defendants, individually or collectively, or by any of
10 defendants' officers, directors, and agents. Neither this stipulation, nor any performance hereunder by
11 defendants, shall create any right on behalf of any person not a party hereto.

12 4. Notwithstanding the foregoing, defendants agree to be bound by and comply with all of
13 the terms and conditions of this stipulation. Defendants expressly reserve any and all rights (including
14 any right to contribution), defenses, claims, demands, and causes of action which defendants may have
15 with respect to any matter, action, event, claim or proceeding relating in any way to the subject matter
16 of the complaint or this stipulation against any person, firm, or corporation except as expressly provided
17 in this stipulation. Defendants do not admit, and retain the right to controvert in any proceedings, other
18 than proceedings for the purpose of implementing or enforcing this stipulation, the validity of the facts
19 or determinations contained in the complaint or this stipulation.

20 5. This settlement shall apply only as to defendants, including their officers, directors, and
21 agents. Plaintiff does not release any person not a party hereto from liability for any violations alleged
22 in or relating to the allegations of the complaint. Plaintiff reserves the right to bring a separate
23 enforcement action against any person not a party hereto.

24 6. This stipulation is entered into this date between the Alameda County District Attorney
25 and defendants. The District Attorney warrants that he has the authority to bind all incorporated or
26 unincorporated cities, towns and communities within Alameda County, as well as the Alameda County
27 Department of Environmental Health to the terms of this stipulation. The District Attorney further

1 warrants that he has authority to bind the San Francisco Regional Water Quality Control Board
2 (hereinafter referred to as "the Regional Board") to the terms of this stipulation which deal with its
3 authority to administer the California Underground Tank Law, Chapters 6.7 and 6.75 of Division 20 of
4 the California Health and Safety Code and to enforce the California Underground Tank Law by use of
5 the provisions of the California Water Code Section 13000 *et. seq.* The District Attorney, however, does
6 not warrant that this stipulation shall bind the Board from its independent authority to take actions under
7 the California Water Code except as stated herein.

8 7. With respect to their operations at or involving the site at 1230 Fourteenth Street,
9 Oakland, California, defendants and their officers, directors, employees and agents, and any and all of
10 them, shall be restrained and enjoined from knowingly violating:

11 A. The Underground Storage of Hazardous Substances Act (Health and Safety Code
12 Sections 25280, *et seq.*);

13 B. The Barry Keene Underground Storage Tank Cleanup Trust Fund Act (Health and
14 Safety Code Sections 25299.10 *et seq.*).

15 8. Defendants shall cooperate to insure the remediation and cleanup of real property situated
16 at 1230 Fourteenth Street, in the City of Oakland, County of Alameda. Defendants shall take action,
17 as follows:

18 A. Corrective Action For Petroleum Hydrocarbon Contamination.

19 Defendant ANDY SABERI shall bear primary responsibility to take corrective action
20 for petroleum hydrocarbon contamination under the direction and to the satisfaction of the
21 Alameda County of Environmental Health, Hazardous Materials Division, Local Oversight
22 Program (hereinafter, "LOP"). SHELL OIL COMPANY, through its environmental engineers,
23 will assume the responsibility of administering the corrective action and remediation.
24 Defendant ANDY SABERI shall, to the satisfaction of the LOP, complete corrective action at
25 1230 Fourteenth Street by performing tasks including, but not limited to the following:

26 i) If directed by the LOP, defendants shall over-excavate pits which
27 formerly contained waste oil and fuel tanks;

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ii) If required, defendants shall lawfully dispose of all excavated and stockpiled soils;

iii) With respect to items i - iii, *supra*, defendants shall meet the following deadlines: a contractor shall be selected within 30 days of the date of judgment; work will begin within 60 days of the date of judgment, and work shall be completed as expeditiously as practicable;

iv) Upon completion of items, i-iii, *supra*, defendants shall perform such additional investigation, remediation and/or monitoring as is pursuant to Chapter 6.75 of division 20 of the Health and Safety Code requires until the LOP certifies and approves closure of the site;

v) Defendants shall submit to the LOP, as required by law or as directed by the LOP, reports of all corrective action taken at the site, including but not limited to any past or future over excavation;

vi) In the event of a default by any party as to responsibilities in this section, the court may take into consideration the availability of funding, including funds, from the State Underground Storage Tank Cleanup Fund in deciding whether to assess civil penalties;

vii) Defendant ANDY SABERI is to comply with all requirements of the state Water Resources Control Board's UST Clean-up Fund and cooperate with SHELL OIL COMPANY to ensure the reimbursement of money that SHELL OIL COMPANY pays for the purposes of completing the corrective action in remediation at 1230 Fourteenth Street.

B. Physical Upkeep of Site.

Defendants PAWAN K. GARG and SOM D. GUPTA, shall maintain the premises at 1230 - Fourteenth Street so that the site is neither an eyesore nor a fire risk. To accomplish this goal, defendants shall take steps including, but not limited to the following:

i) Maintaining all fences surrounding the property at 1230 - 14th Street to

1 prevent trespassing and illegal disposal;

2 ii) By removing and lawfully disposing of all trash and debris deposited on
3 the property, other than debris associated with remediation or investigation;

4 iii) By inspecting and maintaining the property at least once a week to insure
5 that fences are secure and the site is free of trash. Defendants shall maintain a written
6 record of inspections, including the date of each inspection, the property condition at the
7 time of inspection, and any maintenance tasks actually performed;

8 iv) By continuing this schedule of inspection and maintenance until the LOP
9 has approved closure;

10 v) The entry of SOM D. GUPTA and PAWAN K. GARB into this
11 agreement shall not be deemed an admission of any responsibility per ownership of the
12 site, or for claims for premises liability, personal injury, or property damage associated
13 with the maintenance of the property as described hereinabove;

14 vi) If the owner of the property, defendant, ANDY SABERI, or the
15 COUNTY OF ALAMEDA are dissatisfied with the service provided by the retained
16 maintenance contractor, either party shall contact counsel for defendants SOM D.
17 GUPTA and PAWAN K. GARG, and counsel for said defendants will arrange to retain
18 the services of another contractor.

19 C. Community Information.

20 Defendant SHELL OIL CO., INC., shall take all reasonable steps to keep public informed
21 of developments on the site. Such steps shall include, but are not limited to, the following:

22 i) Posting warning signs on fences informing trespassers, including children,
23 of any potential health threats;

24 ii) Mailing information to neighborhood residents and businesses within a
25 half mile radius of the site, explaining the process and progress of on corrective action
26 taken on the site at least once every quarter until the LOP approves the site for closure;

27 iii) Providing members of the general public a telephone number to answer
28

1 inquiries or handle complaints about the site and including that number on the signs
2 specified in subpart i), *supra*, and in the information mailed pursuant to subpart ii),
3 *supra*.

4 D. Defendants PAWAN K. GARG, SOM D. GUPTA and SHELL OIL CO., INC.,
5 shall assist defendant ANDY SABERI in obtaining financing for remediation and investigation
6 activities set forth in subparagraph A, *supra*.

7 E. "Corrective action" as used in this stipulation, is defined under California Code
8 of Regulations, Title 23, Division 3, Chapter 16, Article 11 (commencing with section
9 2720)(hereinafter referred to as "Article 11") and includes, but is not limited to, remedial
10 activities relating to preliminary site assessment, interim remedial action, soil and water
11 investigation, corrective action plan implementation and verification monitoring as defined in
12 Article 11.

13 9. The Parties waive the right to appeal of the Judgment.

14 10. Jurisdiction is retained by the Court for the purpose of enabling any party to this
15 stipulation to apply to the Court at any time for such further orders and directives as may be necessary
16 or appropriate, including the issuance of civil penalties, or the assessment of costs for violations from
17 the time of judgment forward.

18 11. This stipulation may be modified upon written approval of the parties hereto and the
19 Court.

20 12. In the event that any party fails to comply with the terms of this judgment, plaintiff shall take
21 the following steps to enforce the judgment:

22 A. Informal dispute resolution.

23 Before taking any other action to enforce the judgment plaintiff shall provide written
24 notice to all parties, through their respective attorneys of record, of any alleged failure of
25 compliance. Upon receipt of such written notice, defendants and each of them shall be provided
26 the opportunity to make a good faith effort within the next sixty (60) days to:

27 i) Satisfy plaintiff that this judgment has not been violated;

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- ii) Correct any practice or problem which is, or reasonably appears to be, in violation of this judgment;
- iii) Commence correction of any practice or problem which cannot be reasonably accomplished within sixty (60) days despite good faith efforts; or
- iv) Otherwise reach a mutually satisfactory solution of the matters which form the basis of the plaintiff's notice.

B. Contempt proceedings.


Plaintiff shall not petition this court for relief unless plaintiff first complies with the informal dispute resolution procedure outlined in subparagraph A, above, and the parties cannot satisfactorily resolve an alleged failure of compliance.

C. Notification to Fund of noncompliance.

Plaintiff shall not notify the Fund of any alleged failure by defendants or any of them to comply with the requirements of Chapters 6.7 or 6.75 of Division 20 of the Health and Safety Code unless plaintiff petitions this court for relief as outlined in subparagraph B, above, and the court resolves plaintiff's petition in a manner consistent with such notification.

Dated: 6/22/95

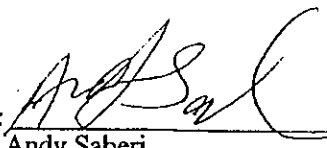
THOMAS J. ORLOFF
District Attorney

By: 
Micheal O'Connor
Deputy District Attorney

Attorneys for Plaintiff

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Dated: 5/18/95

By: 
Andy Saberi,
Defendant

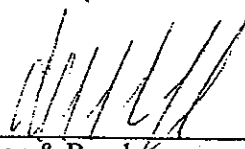
Dated: _____

By: _____
William Paynter,
Attorney for Defendant, Andy Saberi

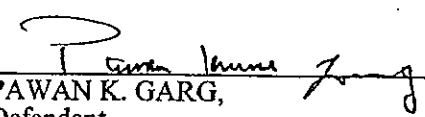
Dated: 4/11/95

By: 
SHELL OIL CO., INC., Sr. Attorney,
A Delaware Corporation, Shell Oil
Defendant Company


Dated: 4/7/95

By: 
Larson & Burnham
Paul D. Caleo,
Attorney for Defendant, Shell Oil Co. Inc.

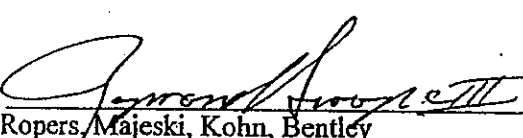
Dated: 5-22-95

By: 
PAWAN K. GARG,
Defendant

Dated: 5-22-95

By: 
SOM D. GUPTA,
Defendant

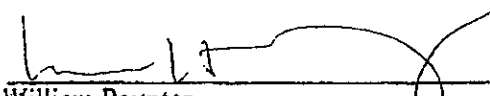
Dated: 5/22/95

By: 
Ropers, Majeski, Kohn, Bentley
Wagner & Kane
Raymond Swope,
Attorney for Defendants, Pawan K. Garg and
Som D. Gupta


1 Dated: _____

By: _____
Andy Saberi,
Defendant


4 Dated: 5-25-95

By: 
William Paynter,
Attorney for Defendant, Andy Saberi

7 Dated: 4/11/95

By: 
SHELL OIL CO., INC.,
A Delaware Corporation,
Defendant
*Sr. Attorney
Shell Oil
Company*

11 Dated: 4/12/95

By: 
Larson & Burnham
Paul D. Caleo,
Attorney for Defendant, Shell Oil Co. Inc.

15 Dated: _____

By: _____
PAWAN K. GARG,
Defendant

18 Dated: _____

By: _____
SOM D. GUPTA,
Defendant

22 Dated: _____

By: _____
Ropers, Majeski, Kohn, Bentley
Wagner & Kane
Raymond Swope,
Attorney for Defendants, Pawan K. Garg and
Som D. Gupta

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Dated: 5-22-95

By: Maira C. McQuaid
Camerlengo & Johnson
Maira C. McQuaid
Attorney for Defendants
Pawn K. Garg and Som D. Gupta

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1 Dated: 5-22-95

By: Maura C. McQuaid
Camerlengo & Johnson
Maura C. McQuaid
Attorney for Defendants
Pawn K. Garg and Som D. Gupta

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10 So Ordered

Ronald M. Salraw
Judge of the Superior Court
RONALD M. SALRAW

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