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16 California State Lands Commission

17 SUPERIOR COURT OF CALIFORNIA
18 COUNTY OF CONTRA COSTA

19 THE PEOPLE OF THE STATE OF
20 CALIFORNIA, ex rel BILL LOCKYER,
ATTORNEY GENERAL,

Case No. MSC04-00524
STIPULATION FOR ENTRY OF
JUDGMENT AND ORDER THEREON
Dept: 1
Judge: Hon. Terence L. Bruiniers

21 Plaintiffs,

22
23 HANSON BUILDING MATERIALS AMERICA,
24 INC., et al,

25 Defendants,

26 And Consolidated Case and Cross Complaint.
27
28

1 Additional Counsel
2 Wayne T. Lamprey (SBN 95408)
Francine T. Radford (SBN 168269)
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1 1.0 PARTIES: This Stipulation for Entry of Judgment ("Stipulation") is entered
2 into by and between The People of the State of California ("State") ex rel Edmund G.
3 Brown Jr., Attorney General, the California State Lands Commission ("SLC"), and qui tarn
4 plaintiff Kevin Bartoo ("Qui Tarn Plaintiff") (collectively, "Plaintiffs"), on the one hand,
5 and Hanson Building Materials America, Inc. (now known as HBMA Holdings, Inc.),
6 Hanson Aggregates West, Inc., Hanson Aggregates Mid-Pacific, Inc. ("HAMP"), Hanson
7 Marine Operations, Inc.("HMO"), Hanson Aggregate Services, Inc. (collectively the
8 "Hanson Entities"), James Peterson, Joel Peterson, Ellen R. Seaborn (collectively the
9 "Petersons"), and Olin Jones (collectively, "Defendants"), on the other hand. The persons
10 and entities entering into this Stipulation are at times referred to individually as a "party"
11 and collectively as the "parties."

12 2.0 RECITALS: The parties enter into this Stipulation with reference to and in
13 acknowledgment of the following facts:

14 2.1 On August 16, 2001, Qui Tarn Plaintiff filed a complaint in San Francisco
15 Superior Court, Case No. CGC01-323842, alleging certain claims against the Defendants in
16 connection with the mining of sand and gravel from submerged State land in the San
17 Francisco Bay and Suisun Bay pursuant to certain leases with the SLC ("Leases") and the
18 mining of sand from State land where Defendants had no leases. After investigating those
19 claims, the California Attorney General intervened in the action pursuant to a Complaint in
20 Intervention filed on October 24,2003,

21 2.2 On July 24, 2003, HMO and HAMP filed a Complaint for Declaratory Relief
22 against the SLC in San Francisco Superior Court, Case No. CGC03-422782, seeking a
23 declaration of lessees' rights and obligations under the Leases. On September 9, 2003,
24 HMO filed a Verified First Amended Complaint for Declaratory Relief. On November 3,
25 2003, the SLC filed a Cross-complaint for Underpayment of Royalties Due Under Mineral
26 Lease and for Mineral Trespass and Conversion.

27 2.3 The foregoing actions were consolidated and transferred to Contra Costa
28 Superior Court as captioned above ("Consolidated Actions"). The Court bifurcated trial on

1 the interpretation of the Leases and, after a bench trial to the Court, on April 12, 2006, the
2 Court issued its Statement of Decision on Lease Interpretation ("Statement of Decision").

3 2.4 On August 27 and 28, 2007, the parties engaged in a mediation of the issues
4 arising out of the Consolidated Actions and agreed to a settlement on the terms stated
5 herein.

6 2.5 Defendants have at all times in the past denied and continue to deny the
7 allegations against them in the pleadings and by agreeing to this Stipulation make no
8 admission regarding any issue of law or fact alleged against them in the pleadings.

9 3.0 STIPULATED JUDGMENT AND SETTLEMENT PAYMENT: In
10 consideration of the agreements, promises, and releases contained herein, the parties agree
11 as follows:

12 3.1 Amount and Method of Payment: Defendants shall pay to Plaintiffs the
13 amount of \$42,200,000 in full satisfaction of all claims alleged against Defendants in the
14 Consolidated Actions, including the Qui Tarn Plaintiff's claim for attorney fees and costs
15 under Government Code section 12652(g)(8), pursuant to a stipulated judgment which shall
16 be entered in the form attached as Exhibit A ("Stipulated Judgment"). Payment of the
17 settlement amounts set forth in paragraph 3.1 shall be as follows:

18 (a) If the Stipulated Judgment is entered by November 28, 2007, at least
19 \$23,000,000 shall be paid by November 30, 2007. If the stipulated judgment is not entered
20 by November 28, 2007, at least \$23,000,000 shall be paid within 10 days of entry of
21 judgment.

22 (b) No interest shall accrue on any amount that is paid within ten days of entry
23 of judgment.

24 (c) The balance of the total settlement amount shall be paid by January 5, 2008.
25 Interest on any amount not paid within ten days of entry of judgment shall accrue at a rate
26 of 10 percent per annum until the principal settlement amount is paid in its entirety.

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1 3.2 Payment shall be made by wire transfer or cashier's check payable to the
2 California Department of Justice. All funds sent to the Department of Justice by wire
3 transfer shall include the following designation:

4 *The People of the State of California ex rel Edmund G. Brown Jr., Attorney*
5 *General vs. Hanson Building Materials America, Inc., et al, Contra Costa*
6 County Superior Court Case No. MSC04-00524, DOJ #SF2001CV1120.

6 3.3 Application for Court Approval of Settlement: The parties shall jointly
7 apply to the Court for approval of the settlement of the Consolidated Actions and a finding
8 that the settlement is "fair, adequate, and reasonable under all of the circumstances" for
9 purposes of Government Code section 12652, subdivision (e)(2)(B), and for entry of the
10 Stipulated Judgment.

11 3.4 Distribution: Upon entry of the Stipulated Judgment, all sums paid pursuant
12 to Paragraph 3.1 are to be deposited in the Litigation Deposit Fund ("Deposit Fund")
13 managed by the Attorney General, who shall be responsible for distributing the funds to the
14 appropriate accounts. The funds placed in the Deposit Fund shall be distributed pursuant to
15 an order from the Court on application to be separately brought by Plaintiffs allocating the
16 settlement payment under Government Code section 12652, subdivision (g), as described
17 further below.

18 3.5 Application for Order Allocating Settlement Proceeds: Plaintiffs shall apply
19 to the Court for an order allocating the settlement payment of \$42,200,000 pursuant to
20 Government Code section 12652, subdivision (g), and the existing Qui Tarn Share
21 Agreement. Defendants are not parties to this proceeding and agree they will take no
22 position before the Court regarding allocation of the settlement payment among or between
23 Plaintiffs.

24 3.6 Any claims the Parties may have regarding the payment of royalties for sand
25 and gravel mined from the leases at issue in the Consolidated Actions on or after July 1,
26 2007, are excluded from this Stipulation and the Stipulated Judgment.

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1 4.0 EFFECT ON OTHER ORDERS:

2 4.1 Waiver of Costs and Sanctions: Except as provided in paragraph 3.1 and
3 Plaintiffs' application for an order allocating the settlement payment pursuant to paragraph
4 3.4, each of the parties shall bear their respective costs and expenses, including but not
5 limited to attorney fees, expert fees and fees from vendors regarding discovery, incurred in
6 connection with the consolidated cases and this Stipulation and waive all sanctions payable
7 pursuant to Court order, including without limitation: (1) the Amended Order Granting
8 Hanson's Motion For Discovery Sanctions entered on May 5, 2007, (2) the Order Adopting
9 Referee's September 6, 2006 Report and Recommendation entered on June 11, 2007, and
10 (3) the ruling on HMO's Motion to Reallocate Backup Tape Restoration Costs heard on
11 August 20,2007.

12 4.2 Statement of Decision on Lease Interpretation: Upon entry of Judgment, the
13 Statement of Decision shall have no effect on the parties or future royalty calculations
14 under the leases identified in HMO's September 9, 2003, Verified First Amended
15 Complaint for Declaratory Relief.

16 5.0 COMPROMISE OF DISPUTED CLAIMS: This Stipulation is a
17 compromise settlement of disputed claims. Defendants deny the allegations by Plaintiffs
18 against them in the pleadings in the consolidated cases and in this Stipulation. The
19 Stipulation is not nor shall it be construed as an admission of liability by Defendants
20 regarding any claim or issue of law or fact in the above-captioned matter or violation of any
21 law.

22 6.0 RELEASES.

23 6.1 Plaintiffs hereby release Defendants and their respective affiliates, parent
24 companies, trusts and related entities, current and former employees, spouses, attorneys,
25 predecessors, successors, and assigns, from all claims arising out of the subject matter of
26 the Consolidated Actions that were raised or could have been raised in the Consolidated
27 Actions, including but not limited to all claims relating to the leases identified in HMO's
28 September 9, 2003, Verified First Amended Complaint for Declaratory Relief. The release

1 set forth in this paragraph 6.1 shall not be construed to preclude any State agency,
2 department, board or entity not a party to this Stipulation from independently exercising its
3 authority under any law, statute or regulation as against any Defendant.

4 6.2 Qui Tarn Plaintiff hereby further releases Defendants and their respective
5 affiliates, parent companies, trusts and related entities, employees, spouses, attorneys,
6 predecessors, successors, and assigns from any and all claims of whatsoever character
7 which Qui Tarn Plaintiff had, now has, or claims to have had against them arising out of or
8 related to any acts or omissions prior to the Effective Date of this Stipulation, whether
9 known or unknown, including but not limited to any claims arising from the Petersons' or
10 the Hanson Entities' employment of Qui Tarn Plaintiff. To the extent permitted by law, the
11 release by Qui Tarn Plaintiff includes, but is not limited to, release of any and all claims
12 arising out of Qui Tarn Plaintiff's employment with the Hanson Entities and the Petersons
13 and the termination of that employment. The Qui Tarn Plaintiff's release includes but is not
14 limited to the claims the Qui Tarn Plaintiff has asserted under the California False Claims
15 Act, which, among other things, prohibits discrimination against an employee for taking
16 actions permitted by the Act, and any rights or claims Qui Tarn Plaintiff may have under
17 the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. (as amended by me
18 Older Workers' Benefit Protection Act, 29 U.S.C. § 626(f)), which prohibits age 19 discrimination in employ
20 2000, et seq., which prohibits discrimination or harassment in employment based on race,
21 color, national origin, religion, or sex; the Equal Pay Act, which prohibits paying men and
22 women unequal pay for equal work; the Americans with Disabilities Act (42 U.S.C. §§
23 12101, et seq.), which prohibits discrimination against the disabled; the Employee
24 Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, et seq.; the California Fair
25 Employment and Housing Act ("FEHA"), Government Code §§ 12940, et seq.; the Fair
26 Labor Standards Act, 29 U.S.C. §§ 201 et seq. (as amended); The California Labor Code; or
27 any other federal, state or local laws or regulations relating to terms and conditions of
28 employment. The Agreement also includes but is not limited to any claims for wrongful

1 discharge, fraud, misrepresentation, intentional and negligent infliction of emotional
2 distress, harassment, and any claims that the Defendants have dealt with Qui Tam Plaintiff
3 unfairly or in bad faith. Qui Tam Plaintiff acknowledges that his employment with the
4 Hanson Entities ceased on or before the date this Stipulation is signed by Qui Tam Plaintiff.

5 6.3 Defendants hereby release the State and the SLC and their respective current
6 and former employees and attorneys from all claims arising out of the subject matter of the
7 Consolidated Actions that were raised or could have been raised in the Consolidated
8 Actions, including but not limited to all claims relating to the leases identified in HMO's
9 September 9,2003, Verified First Amended Complaint for Declaratory Relief.

10 6.4 Defendants hereby release Qui Tam Plaintiff his spouse, attorneys,
11 predecessors, successors, and assigns from any and all claims of whatsoever character
12 which they had, now have, or claim to have against them arising out of or related to any
13 acts or omissions prior to the Effective Date of this Stipulation, whether known or
14 unknown, including but not limited to any claims arising from the Petersons' or the Hanson
15 Entities' employment of Qui Tam Plaintiff.

16 6.5 Qui Tam Plaintiff's and Defendants' Waiver of Civil Code Section 1542:
17 Qui Tam Plaintiff and Defendants expressly waive as to each other their rights under Civil
18 Code section 1542, which states:

19 A general release does not extend to claims which the creditor does not
20 know or suspect to exist in his or her favor at the time of executing the
21 release, which if known to him or her must have materially affected his or
22 her settlement with the debtor.

23 7.0 APPROVAL CONDITIONS:

24 7.1 The settlement of this action was conditioned upon approval of the
25 settlement by the SLC, which approval was granted by the SLC on October 30,2007.

26 7.2 The settlement of this action was further conditioned upon the SLC and the
27 Hanson Entities reaching agreement on the amended royalty rate for the remainder of the
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1 existing term for SLC leases PRC Nos. 2036.1, 709.1, 7779.1, and 7780.1, including
2 holdover period(s), if any, which agreement was reached on October 26,2007,

3 7.3 The settlement of this action was further conditioned upon approval by
4 Hanson and by the SLC of an amendment to SLC leases PRC Nos. 2036.1, 709.1, 7779.1,
5 and 7780.1 setting an amended royalty rate for the remainder of the existing term for those
6 leases, including holdover period(s), if any. Hanson approved the amendment on October
7 29,2007. The SLC approved the amendment on October 30, 2007.

8 7.4 The settlement of this action was further conditioned on approval by the
9 Attorney General of California, which approval was given on November 20, 2007.

10 7.5 The settlement of this action remains conditioned on approval of the
11 settlement and this Stipulation by the Court, including a finding that the settlement is "fair,
12 adequate, and reasonable under all of the circumstances" for purposes of Government Code
13 section 12652, subdivision (e)(2)(B).

14 7.6 The settlement of this action also remains conditioned on entry of judgment
15 by the Court in substantially the form the attached hereto as Exhibit A.

16 8.0 PERFORMANCE OF TERMS: Time is of the essence and each party shall
17 promptly perform all acts and execute all documents necessary to effectuate the terms of
18 this Stipulation.

19 9.0 INTEGRATION: This Stipulation constitutes the entire agreement and
20 understanding between the parties relating to the settlement of the Consolidated Actions
21 and supersedes all prior written or oral agreements, understandings, or representations of
22 the parties relating thereto.

23 10.0 MODIFICATION: This Stipulation may be modified only upon written
24 consent of the parties and the approval of the Court.

25 11.0 WAIVER: No term or condition of this Stipulation shall be deemed to have
26 been waived, nor shall there be an estoppel against the enforcement of any provision of this
27 Stipulation, except by written instrument signed by the party charged with the waiver or
28 estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated

1 therein, and the written waiver of a term or condition as to a specific act or occurrence shall
2 not operate as a waiver of any other term or condition or for any other or future act or
3 occurrence.

4 12.0 CALIFORNIA LAW: This Stipulation, and the rights, remedies, and
5 obligations provided for hereunder, shall be construed and enforced in accordance with the
6 laws of the State of California, without regard to choice of law principals.

7 13.0 ENFORCEMENT: Contra Costa County Superior Court shall retain
8 jurisdiction after entry of the Stipulated Judgment to hear and determine Plaintiffs' motion
9 to allocate the settlement payment as set forth in section 3.4 above, and to enforce this
10 Stipulation pursuant to Code of Civil Procedure section 664.6, and the Parties stipulate to
11 the assignment of any such proceeding to the Hon. Terence L. Bruiniers. In the event a
12 party brings an action to enforce any of the terms of this Stipulation or the Stipulated
13 Judgment, the prevailing party shall be entitled to its reasonable costs and expenses,
14 including attorney fees and costs, costs for expert witnesses, and other costs of
15 enforcement.

16 14.0 INTERPRETATION: This Stipulation shall be deemed to have been drafted
17 equally by the parties and any rules of construction to the effect that ambiguity is construed
18 against the drafting party shall be inapplicable in any dispute concerning the terms,
19 meaning, or interpretation of this Stipulation.

20 15.0 EFFECTIVE DATE: This Stipulation shall be effective on the date of
21 execution by the last signing party, exclusive of attorneys' approvals as to form.

22 16.0 UNDERSTANDING OF TERMS: The parties represent that they have read
23 this Stipulation, that its terms have been fully explained to them by their attorneys, and that
24 they understand and agree with its terms.

25 17.0 AUTHORITY TO ENTER INTO STIPULATION: Each signatory to this
26 Stipulation represents that he or she is fully authorized by the party he or she represents to
27 enter into this Stipulation, to execute it on behalf of the party represented, and to legally to
28 bind that party.

1 18.0 EXECUTION IN COUNTERPARTS: This Stipulation may be executed in
2 counterparts, each of which shall be deemed an original. Said counterparts shall constitute
3 but one and the same document, and when a copy is signed by an authorized representative
4 of each party, the stipulation shall be effective as if a single document were signed by all
5 parties,

6 FOR PLAINTIFFS:

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THE CALIFORNIA STATE LANDS
COMMISSION

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By

A handwritten signature in black ink, appearing to read "Paul Hager", is written over a horizontal line.

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It's **Executive Officer**

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THE PEOPLE OF THE STATE OF
CALIFORNIA EX REL EDMUND G. BROWN
JR., ATTORNEY GENERAL

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By

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24 FOR THE QUI TAM PLAINTIFF:

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KEVIN BAR.TOO

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James Peterson

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Stipulation for Entry of Judgement and Order Thereon

1 FOR. DEFENDANTS:

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OLIN JONES

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JAMES PETHRSON

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 **A. Peterson**

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JOEL PETERSON

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ELLEN SEAHORN

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HANSON. A. GREGATES MID-PACIFIC, INC.

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By

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It's

1 FOR DEFENDANT'S:

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OLIN

JONES

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JAMBS PETERSON

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JOEL PETERSON

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Joel

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HANSON AGGREGATES MID-PACIFIC, INC.

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26 By _____

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It's _____.

2*

1 FOR DEFENDANTS:

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OLIN JONES

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JAMBS PETERSON

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JOEL PETERSON

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HANSON AGGREGATES MID-PACIFIC, INC.

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B y k ^ I . W i l l i a m s ,

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27

It's Assistant Secretary

28

1 APPROVED AS TO FORM:

2

3 STATE OF CALIFORNIA- DEPARTMENT OF JUSTICE
4 Office of Attorney General
5 13001 Street, Suite 125
6 P.O. Box 944255
7 Sacramento, CA 94244-2550

8 By: 
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Dated: 7/1/21, 2007.

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15 By: _____
16 Attorneys for the State Lands Commission

Dated: __, 2007.

17 GOODIN MACBRIDE SQUERI RITCHIE DAY & LAMPREY
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20 San Francisco, CA 94111

21 By: _____
22 Attorneys for Kevin Bartoo

Dated: __, 2007.

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25 Post Office Box 7880
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27 By: _____
28 Attorneys for the Hanson Entities

Dated: __, 2007.

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Walnut Creek, CA 94596

By: _____
Attorneys for Olin Jones

Dated: __, 2007.

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Dated: 2007.

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15 By:  _____
16 Attorneys for the State Lands Commission

Dated: **Nov. 20**, 2007.

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Dated: _____, 2007.

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27 By: _____
28 Attorneys for the Hanson Entities

Dated: _____, 2007.

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Dated: _____, 2007.

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Dated: _____, 2007.

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Dated: _____, 2007.

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21 By:  _____
22 Attorneys for Kevin Bartoo

Dated: NOV 20, 2007.

23
24 PILLSBURY WINTHROP SHAW PITTMAN LLP
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28 By: _____
Attorneys for the Hanson Entities

Dated: _____, 2007.

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By: _____
Attorneys for Olin Jones

Dated: _____, 2007.

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8 By: _____ Dated: _____, 2007.
9 Attorneys for the People of the State of California

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11 Office of Attorney General
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14 Oakland, CA 94612-2150


15 By: _____ Dated: _____, 2007.
16 Attorneys for the State Lands Commission

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20 San Francisco, CA 94111

21 Dated: _____, 2007.

22 By: _____
23 Attorneys for Kevin Bartoo

24 PILLSBURY WINTHROP SHAW PITTMAN LLP
25 50 Fremont Street
26 Post Office Box 7880
27 San Francisco, CA 94120-7880

28 By:  _____ Dated November 20, 2007.
Attorneys for the Hanson Entities

29 SHAPIRO, BUCHMAN, PROVINE & PATTON LLP
30 1333 North California Blvd., Suite 350
31 Walnut Creek, CA 94596

32 By: _____ Dated: _____, 2007.
33 Attorneys for Olin Jones

34

APPROVED AS TO FORM:

2

By: Attorneys for the People of the State of California **Dated:** ,2007

8

Attorneys for the State Lands Commission

14 Goodin MacBride Squiri Ritche Day & Lamprey

15

,2007

Attorneys for Kevin Bartoo

19

,2007


Attorneys for Olin Jones

11/21, 2007

28

1 MCNICHOLS BEERS LLP
2 6600 Koll Center Parkway, Suite 250
3 Pleasanton, CA 94566

4 By: 
Attorneys for the Petersons

Dated: **11/21** 2007.

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ORDER

It is so ordered.

Dated:_____.

Hon. Terence L. Bruiniers
Judge of the Superior Court

EXHIBIT A

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 CHRISTOPHER M. AMES
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16 California State Lands Commission

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF CONTRA COSTA

19
20 THE PEOPLE OF STATE OF CALIFORNIA, *ex rel* BILL LOCKYER,
21 ATTORNEY GENERAL,
22 Plaintiffs,
23 v.
24 HANSON BUILDING MATERIALS
25 AMERICA, INC., et al.,
26 Defendants.
27 and Consolidated Case and Cross Complaint
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Case No. MSC04-00524

STIPULATED JUDGMENT

Dept: 1

Judge: Hon. Terence L. Bruiniers

1 Additional Counsel
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2 Francine T. Radford (SBN 168269)
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5 Attorneys for the Qui Tarn Plaintiff Kevin Bartoo

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1 The People of the State of California ex rel Edmund G. Brown Jr., Attorney General,
2 the California State Lands Commission, and qui tam plaintiff Kevin Bartoo ("Plaintiffs"), on
3 the one hand, and Hanson Building Materials America, Inc. (now known as HBMA
4 Holdings, Inc.), Hanson Aggregates West, Inc., Hanson Aggregates Mid-Pacific, Inc.,
5 Hanson Marine Operations, Inc., Hanson Aggregate Services, Inc., James Peterson, Joel
6 Peterson, Ellen R. Seaborn, and Olin Jones ("Defendants"), on the other hand, having
7 stipulated thereto in the Stipulation for Entry of Judgment and Order Thereon separately filed
8 herein, and good cause appearing therefore,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

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11 1. Plaintiffs the State of California and the California State Lands Commission
12 shall and hereby do have judgment against defendants Hanson Building Materials America,
13 Inc. (now known as HBMA Holdings, Inc.), Hanson Aggregates West, Inc., Hanson
14 Aggregates Mid-Pacific, Inc., Hanson Marine Operations, Inc., Hanson Aggregate Services,
15 Inc., James Peterson, Joel Peterson, Ellen R. Seaborn, and Olin Jones in the amount of
16 \$42,200,000.00.

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18 2. The settlement set forth in the Stipulation for Entry of Judgment and Order
19 Thereon separately filed herein is fair, adequate, and reasonable under all of the
20 circumstances for purposes of Government Code section 12652, subdivision (e)(2)(B).

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22 3. Except as may be incorporated into an order allocating the settlement payment
23 pursuant to paragraph 3.4 of the Stipulation for Entry of Judgment and Order Thereon,
24 Plaintiffs and Defendants shall bear their respective costs.

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26 4. The Court shall retain jurisdiction to hear and determine an application by
27 Plaintiffs allocating the settlement payment and any motions or other proceedings which may

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1 be brought to enforce the Stipulation for Entry of Judgment pursuant to Code of Civil
2 Procedure section 664.6.

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4 Dated: _____

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HON. TERENCE L. BRUINIERS
Judge of the Superior Court

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