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VENTURA SUPERIOR COURT

MAY 07 2009

VENTURA
SUPERIOR COURT
FILED

MAY 22 2009

MICHAEL D. PLANET
Executive Officer and Clerk

BY: DEBRA HEBER, Deputy

Attorneys for Plaintiff People of the State of California
[Plaintiff's Counsel Continued on Attached]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

KMART CORPORATION,
Defendant

Case No. 56-2009-00344058-CU-MC-VTA

**STIPULATION FOR ENTRY OF
FINAL JUDGMENT AND FINAL
JUDGMENT**

This Stipulation for Entry of Final Judgment and Final Judgment ("Final Judgment") is entered into by Plaintiff, the People of the State of California ("People") and defendant KMART Corporation ("KMART"). For purposes of this Final Judgment, the People and KMART shall be referred to collectively as "Parties" and individually as "Party." The Parties have stipulated and consented to the entry of this Final Judgment prior to the taking of any proof, and without trial or adjudication of any fact or law herein. The Parties also have waived their right to appeal and have agreed to settle the above-captioned matter without further litigation, as set forth below.

INTRODUCTION

This matter arises from the People's investigation into KMART's compliance with California laws and regulations governing the storage, handling, treatment, transportation, and disposal of hazardous waste and hazardous materials, pursuant to Health and Safety Code Division

20, Chapters 6.5 and 6.95, and their implementing regulations, at KMART's operating retail facilities in California on and before May 1, 2009. As set forth in the Complaint filed concurrently herewith (the "Complaint"), the People allege that KMART violated Chapters 6.5 and 6.95 of Division 20 of the Health and Safety Code, and the regulations promulgated under those chapters; and Business and Professions Code section 17200, et seq., by KMART's improper handling, disposal, treatment, and/or storage of hazardous waste and hazardous materials generated in the course of their operation of their California retail facilities from May 2003, through and including May 1, 2009.

The Parties engaged in settlement negotiations prior to the filing of this Final Judgment. In those settlement negotiations the People were represented by the Attorney General of the State of California and the District Attorneys for the Counties of San Joaquin, Ventura, and Riverside. KMART was represented by Michael Steel of Morrison & Foerster, LLP.

The Parties have agreed to settle this matter without litigation pursuant to the terms of this Final Judgment. Towards this end, the People have filed their Complaint simultaneously with the lodging of this Final Judgment and a motion for approval of this Final Judgment.

The People believe that the resolution embodied in this Final Judgment is fair and reasonable and fulfills the People's enforcement objectives; that the terms of this Final Judgment are appropriate; and that entry of this Final Judgment is in the best interests of the public. This Final Judgment is neither an admission nor a denial by KMART regarding any issue of law or fact alleged in the Complaint in this matter or of any violation of any law.

FINAL JUDGMENT INCLUDING INJUNCTION

PURSUANT TO STIPULATION; ORDER

The Parties, after opportunity for review by their respective counsel, hereby stipulate and consent to the entry of this Final Judgment as set forth below.

1. DEFINITIONS

Except where otherwise expressly defined in this Final Judgment, all terms shall be interpreted as set forth herein and consistent with Chapters 6.5 and 6.95 of Division 20 of the Health and Safety Code and the regulations promulgated under those chapters.

1 “Covered Facilities” means the KMART retail facilities in the State of California listed on
2 Exhibit A attached hereto and incorporated by reference.

3 “Future Facilities” means any retail facilities that KMART may, after the entry of the Final
4 Judgment, open in California in addition to the Covered Facilities.

5 **2. JURISDICTION**

6 The Parties stipulate and agree that the Superior Court of California, County of Ventura, has
7 subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the
8 Parties to this Final Judgment.

9 **3. PAYMENTS FOR PENALTIES, ENVIRONMENTAL PROTECTION**
10 **ENFORCEMENT AND OTHER PROJECTS**

11 KMART shall pay civil penalties, *cy pres* restitution, fund the supplemental environmental
12 projects provided for in this Final Judgment and pay costs in the total amount of EIGHT MILLION
13 SIX HUNDRED AND FIFTY THOUSAND DOLLARS (\$8,650,000.00). All payments set forth in
14 paragraphs 3.1.a, 3.1.b., 3.2.a, and 3.3 below shall be delivered to the Ventura County District
15 Attorney at the address set forth in paragraph 7, below, or by wire transfer, and shall be allocated and
16 distributed as set forth in paragraphs 3.1 through 3.5 below.

17 **3.1 Civil Penalties**

18 3.1.a. On or before the date of approval by the Court of this Final Judgment,
19 KMART shall pay TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$2,800,000.00)
20 as civil penalties pursuant to section 17206 of the Business and Professions Code, and SIX
21 HUNDRED THOUSAND DOLLARS (\$600,000.00) as civil penalties pursuant to section 25515.2
22 of the Health and Safety Code, to the prosecuting agencies/regulatory agencies identified in, and in
23 accordance with the terms of, **Exhibit B**, attached hereto and incorporated by reference.

24 3.1.b. Additionally, KMART shall pay ONE MILLION SIX HUNDRED
25 THOUSAND DOLLARS (\$1,600,000.00) as civil penalties to the prosecuting agencies pursuant to
26 section 17206 of the Business and Professions Code. However, payment of the entire ONE
27 MILLION SIX HUNDRED THOUSAND DOLLARS (\$1,600,000.00) of civil penalties set forth in
28 this paragraph 3.1.b., shall be stayed (“Stayed Penalty”) for a period of five (5) years from the date

of entry of this Final Judgment. The Stayed Penalty shall become due and payable in the event KMART violates Health and Safety Code Section 25189, subdivision (c) (the "Stayed Penalty Provision"). If KMART fails to comply as set forth above during the five-year period, then KMART shall, subject to the provisions of section 5.1 herein, pay the Stayed Penalty amount to the prosecuting agencies as follows:

(1) Upon the first instance of any violation of the Stayed Penalty Provision at or by any one of the Covered Facilities or Future Facility, KMART shall pay between TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) depending on the facts and circumstances of each such violation;

(2) Upon the second instance of any violation(s) of the Stayed Penalty Provision at a Covered or Future Facility which has previously paid a Stayed Penalty for a violation of the Stayed Penalty Provision, KMART shall pay between FORTY THOUSAND DOLLARS (\$40,000.00) and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) depending on the facts and circumstances of each such violation;

(3) Upon a third instance or any subsequent instance of any violation of the Stayed Penalty Provision at a Covered Facility or Future Facility that has paid a Stayed Penalty for at least two prior violations of the Stayed Penalty Provision, KMART shall pay between SIXTY THOUSAND DOLLARS (\$60,000.00) and TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) depending on the facts and circumstances of each such subsequent violation.

3.2 Cy Pres Restitution and Supplemental Environmental Projects

3.2.a On or before the date of approval by the Court of this Final Judgment,, KMART shall pay EIGHT HUNDRED AND FIFTY THOUSAND DOLLARS (\$850,000.00) as *cy pres* restitution to the prosecuting agencies pursuant to section 17203 of the Business and Professions Code, which shall be allocated to special environmental projects identified in, and in accordance with the terms of, **Exhibit C**, attached hereto and incorporated by reference.

1 3.2.b KMART shall pay TWO MILLION FIVE HUNDRED THOUSAND
2 DOLLARS (\$2,500,000.00) for supplemental environmental projects identified in, and in accordance
3 with the terms of, **Exhibit D**, attached hereto and incorporated by reference.

4 3.3 Reimbursement of Costs of Investigation and Enforcement

5 On or before the date of approval by the Court of this Final Judgment, KMART shall pay
6 THREE HUNDRED THOUSAND DOLLARS (\$300,000.00), to the prosecuting agencies for partial
7 reimbursement of attorney's fees, costs of investigation, and other costs of enforcement incurred,
8 which shall be allocated to the entities identified in, and in accordance with the terms of, **Exhibit E**,
9 attached hereto and incorporated by reference.

10 3.4 Copy of Payments to Plaintiff's Representatives

11 KMART shall send a photocopy of all payments made by check, or an electronic
12 confirmation of any payment made by wire transfer, to each of the People's representatives
13 identified in paragraph 7, below, at the time of payment.

14 3.5 Late Payments

15 KMART shall be liable for a stipulated civil penalty of \$5,000.00 for each day that any
16 portion of any payment required pursuant to paragraphs 3.1 through 3.3 is paid beyond thirty (30)
17 days from the date on which the Court signs this Judgment, or for Stayed Penalty payments, for each
18 day beyond thirty (30) days from the date such payment is due as determined either by agreement of
19 the Parties or order of the Court.

20 4. INJUNCTIVE RELIEF

21 Pursuant to the provisions of Health and Safety Code section 25516.2 and Business and
22 Professions Code section 17203, KMART, its agents, successors and assigns (collectively "Enjoined
23 Persons") are permanently enjoined from failing to comply with Chapters 6.5 and 6.95 of Division
24 20 of the Health and Safety Code and the regulations promulgated under these chapters, and the
25 requirements of the relevant Certified Unified Program Agencies ("CUPAs") pertaining to these
26 laws at the Covered Facilities, and Future Facilities. Failure by any Enjoined Person to comply with
27 the specific injunctive provisions that follow may subject it to additional sanctions, including but not
28 limited to, contempt and additional penalties under California civil or criminal laws.

1 4.1 Specific Injunctive Provisions

2 Enjoined Persons are permanently enjoined and restrained from violating any of the
3 following requirements of California law at Covered Facilities, and any Future Facilities:

4 4.1.a. Delivering, or otherwise transferring possession of, any hazardous waste to a
5 person or entity that is not properly licensed and registered to transport hazardous waste, in
6 violation of California Health and Safety Code section 25163(a)(1);

7 4.1.b. Transporting any hazardous waste without being properly licensed and
8 registered to transport hazardous waste, in violation of California Health and Safety Code section
9 25163(a)(1);

10 4.1.c. Disposing, or causing the disposal of, hazardous waste at a point not
11 authorized, in violation of Health and Safety Code section 25189;

12 4.1.d. Storing hazardous waste beyond the time permitted by law at a facility which
13 does not have a hazardous waste storage permit from the California Department of Toxic
14 Substances Control, in violation of California Code of Regulations, Title 22, section 66262.34;

15 4.1.e. Failing to properly and timely dispose of accumulated hazardous waste at least
16 once every ninety (90) days, in violation of California Code of Regulations, Title 22, section
17 66262.34;

18 4.1.f. Failing to obtain and keep current all required hazardous waste generator
19 permits required by county and local ordinances;

20 4.1.g. Failing to comply with employee training obligations as set forth in California
21 Code of Regulations, Title 22, section 66265.16, pertaining to handling of hazardous waste,
22 including but not limited to the requirement to maintain, for a period of three years, training
23 documentation for each employee involved in hazardous waste handling;

24 4.1.h. Treating, storing, disposing of, transporting, or offering for transportation, any
25 hazardous waste without having received and used a proper identification number from the U.S.
26 Environmental Protection Agency or the California Department of Toxic Substances Control for
27 the originating facility, in violation of California Code of Regulations, Title 22, section
28

1 66262.12(a). Further, KMART shall ensure that each Covered Facility at which hazardous waste is
2 generated has a generator identification number;

3 4.1.i. Failing to determine if a generated waste is a "hazardous waste" as required by
4 California Code of Regulations, Title 22, section 66262.11, and, if such waste is determined to be
5 hazardous, failing to handle the hazardous waste in accordance with the requirements of Chapter
6 6.5 of the Health & Safety Code and its implementing regulations in the California Code of
7 Regulations, Title 22, including but not limited to section 66265.172 (compatible contents), and
8 section 66265.177 (placing incompatible waste streams in the same container);

9 4.1.j. Failing to properly label containers of accumulated hazardous waste, in
10 violation of California Code of Regulations, Title 22, section 66262.34;

11 4.1.k. Failing to keep containers of hazardous waste closed, except when removing or
12 adding hazardous waste, in violation of California Code of Regulations, Title 22, section
13 66265.173;

14 4.1.l. Failing to retain copies of all consolidated hazardous waste manifests for three
15 years, in violation of Health and Safety Code section 25160.2(b)(3) and California Code of
16 Regulations, Title 22, section 66262.40(a). As used in this paragraph "manifest" means a shipping
17 document originated and signed by a generator of hazardous waste that contains all of the
18 information required by law and that complies with all applicable federal and state regulations
19 including, and includes but is not limited to, bills of lading;

20 4.1.m. Failing to at all times have in place a hazardous waste contingency plan and
21 emergency procedures for each Covered Facility, in violation of California Code of Regulations,
22 Title 22, sections 66265.51 through 66265.56;

23 4.1.n. Failing, at any Covered Facility, to implement, maintain and comply with an
24 employee training program meeting the requirements of , Health and Safety Code section 25504,
25 subdivisions (a) and (c), and California Code of Regulations, Title 19, section 2732, pertaining to
26 hazardous materials, business, and area plans;

1 4.1.o. Failing, at any Covered Facility, to implement and maintain a business
2 emergency plan for emergency response to a release or threatened release of hazardous materials,
3 in violation of Health and Safety Code section 25503.5;

4 4.1.p. Failing to implement, maintain or to submit to the administering agency (as
5 defined in Health and Safety Code sections 25501 and 25502), a complete hazardous materials
6 business plan for each Covered Facility, in violation of Health and Safety Code sections 25504 and
7 25505 and California Code of Regulations, Title 19, section 2729;

8 4.1.q. Failing to maintain and operate any Covered Facility so as to minimize the
9 possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste
10 or hazardous waste constituents to air, soil or surface water which could threaten human health or
11 the environment, in violation of California Code of Regulations, Title 22, section 66265.31;

12 4.1.r. Failing to maintain containers holding hazardous waste at any Covered Facility
13 so as to prevent leaks, in violation of California Code of Regulations, Title 22, section 66265.173;

14 4.1.s. Failing to maintain adequate aisle space in any hazardous waste storage area at
15 any Covered Facility, in violation of California Code of Regulations, Title 22, section 66264.35;

16 4.1.t. Failing to conduct weekly inspections of hazardous waste storage areas at any
17 Covered Facility, in violation of California Code of Regulations, Title 22, section 66264.174.

18 4.2 On May 1, 2009 KMART provided to the People its program for proper handling,
19 storage and transportation and disposal of hazardous materials and wastes. KMART shall maintain
20 such program, or an equivalent program, as long as the injunction is in effect. As used in this
21 paragraph, "equivalent program" shall mean a program that is designed to achieve compliance with
22 Chapters 6.5 and 6.95 of Division 20 of the Health and Safety Code and the regulations promulgated
23 under these chapters in all material respects.

24 5. **ENFORCEMENT OF FINAL JUDGMENT AND PENALTIES**

25 5.1 In the event the People determine that a violation has occurred and that the Stayed
26 Penalty or some portion thereof is due and payable, the People will provide notice of such finding to
27 KMART in writing, setting forth with specificity the facts and law upon which such determination is
28 based. KMART shall, within 30 days, advise the People in writing whether it contests such notice.

1 In the event KMART elects to contest the People's notice, it shall provide the facts and law upon
2 which it bases such contest to the People in writing. The Parties agree to meet and confer to attempt
3 to resolve their dispute before taking any action to enforce the terms hereof. If no informal
4 resolution of a violation results, the People may by motion or application before the Superior Court
5 of Ventura, seek Stayed Penalties as provided in paragraph 3.1.b hereof.

6 5.2 Except as provided in paragraph 6 hereof, nothing in this Final Judgment shall limit
7 any rights of the People to seek any other relief or criminal or civil remedies provided by law.

8 **6. MATTERS COVERED BY THIS FINAL JUDGMENT**

9 6.1 This Final Judgment is a final and binding resolution and settlement of all "Covered
10 Matters." As used in this Final Judgment, Covered Matters means all claims that have been alleged,
11 or claims that could have been asserted within the scope of the allegations set forth, in the Complaint
12 in this matter up until May 1, 2009, according to statute, regulation, or ordinance by or through the
13 People of the State of California. The People reserve the right to pursue any claim, violation or
14 cause of action that is not a Covered Matter ("Reserved Claim") and KMART reserves the right to
15 defend against any Reserved Claim. Claims, violations or causes of action against KMART's
16 independent contractors or subcontractors, if any, are not resolved by this Final Judgment.

17 6.2 Any claims, violations or causes of action against KMART that are not alleged in the
18 Complaint, including, but not limited to, any violations that occurred after May 1, 2009, are not
19 resolved, settled or covered by this Final Judgment. The Parties entered into pre-filing tolling
20 agreements in this matter. The Parties agree that the tolling agreements were intended to, and did,
21 toll only those claims, violations and causes of action that are contained in the Complaint and/or
22 resolved by this Final Judgment. Other claims, violations or causes of action against KMART by the
23 People, if any, were not tolled by the Parties' tolling agreements, and for those claims, the tolling
24 agreements had no force or effect.

25 6.3 Notwithstanding any other provision of the Final Judgment, Covered Matters does not
26 include any claims or causes of action against KMART for (1) performance of cleanup, corrective
27 action, or response action concerning or arising out of any actual past or future releases, spills, or
28 disposals of hazardous wastes, hazardous materials or hazardous substances at and from KMART's

1 facilities in California, including but not limited to its Covered Facilities; and (2) claims or causes of
2 action relating to KMART's disposal of hazardous wastes, hazardous materials or hazardous
3 substances that are unknown to the People. Such matters are Reserved Claims.

4 6.4 In any subsequent action that may be brought by the People based on any Reserved
5 Claim, KMART agrees that it will not assert that failing to pursue the Reserved Claims as part of this
6 action constitutes claim-splitting, laches or is otherwise inequitable because such claims should have
7 been brought as part of this action. This paragraph does not prohibit KMART from asserting any
8 statute of limitations or other legal or equitable defenses that may be applicable to any Reserved
9 Claims.

10 6.5 In the event that litigation is filed by an entity that is not a party to this action against
11 KMART arising out of or related to a Covered Matter, KMART may within 30 days following
12 service of such litigation upon KMART notify the People of such litigation. Upon such timely
13 notice, the People will appear in person or in writing (at the People's discretion) in such subsequent
14 litigation to explain the effect of this Final Judgment on such litigation. If the People determine that
15 the subsequent litigation is barred by the principles in this paragraph, the People will support
16 KMART in arguing that the subsequent litigation is barred by the principle of *res judicata*.

17 6.6 The provisions of paragraph 6.1 are effective upon full payment by KMART of the
18 sums required pursuant to this Final Judgment. The continuing effect of paragraph 6.1 is expressly
19 conditioned on KMART's full payment of the amounts due under this Final Judgment.

20 6.7 Paragraph 6.1 does not limit the ability of the People to enforce the terms of the Final
21 Judgment.

22 6.8 KMART covenants not to pursue any civil or administrative claims against the People
23 or against any agencies of the State of California, any counties in the State of California or any
24 CUPA, Participating Agency or Local Agency, or against their officers, employees, representatives,
25 agents or attorneys arising out of or related to any Covered Matter.

26 **7. NOTICE**

27 All submissions and notices required by this Final Judgment shall be sent to:

28 For the People:

1 Margarita Padilla
2 Supervising Deputy Attorney General
3 Office of the Attorney General
4 1515 Clay Street, 20th Floor
5 Oakland, CA 94612-0550
6
7 AND
8 Mitchell F. Disney
9 Senior Deputy District Attorney
10 Ventura County District Attorney's Office
11 5720 Ralston Street, Suite 300
12 Ventura, CA 93003
13
14 For KMART:
15 General Counsel
16 Sears Holdings Company
17 3333 Beverly Road
18 Hoffman Estates IL 60192-3322
19
20 With copies to:
21 Michael Jacob Steel
22 Morrison & Foerster LLP
23 425 Market Street
24 35th Floor
25 San Francisco California 94105
26 TEL: 415.268.7350
27 FAX: 415.268.7522
28 msteel@mofo.com

Any Party may change its notice name and address by informing the other party in writing, but no change is effective until it is received. All notices and other communications required or permitted under this Final Judgment that are properly addressed as provided in this paragraph are effective upon delivery if delivered personally or by overnight mail, or are effective five (5) days following deposit in the United States mail, postage prepaid, if delivered by mail.

8. EFFECT OF JUDGMENT

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

1 **9. LIABILITY OF THE PEOPLE**

2 The People shall not be liable for any injury or damage to persons or property resulting from
3 acts or omissions by KMART, its directors, officers, employees, agents, representatives or
4 contractors, in carrying out activities pursuant to this Final Judgment, nor shall the People be held as
5 a party to or guarantor of any contract entered into by KMART, its directors, officers, employees,
6 agents, representatives or contractors, in carrying out the requirements of this Final Judgment.

7 **10. NO WAIVER OF RIGHT TO ENFORCE**

8 The failure of the People to enforce any provision of this Final Judgment shall neither be
9 deemed a waiver of such provision nor in any way affect the validity of this Final Judgment. The
10 failure of the People to enforce any such provision shall not preclude it from later enforcing the same
11 or any other provision of this Final Judgment. No oral advice, guidance, suggestions or comments
12 by employees or officials of any Party regarding matters covered in this Final Judgment shall be
13 construed to relieve any Party of its obligations under this Final Judgment.

14 **11. FUTURE REGULATORY CHANGES**

15 Nothing in this Final Judgment shall excuse KMART from meeting any more stringent
16 requirements that may be imposed by applicable law or by any changes in the applicable law.

17 **12. APPLICATION OF FINAL JUDGMENT**

18 This Final Judgment shall apply to and be binding upon the People and upon KMART and its
19 successors and assigns.

20 **13. AUTHORITY TO ENTER FINAL JUDGMENT**

21 Each signatory to this Final Judgment certifies that he or she is fully authorized by the party
22 he or she represents to enter into this Final Judgment, to execute it on behalf of the party represented
23 and legally to bind that party.

24 **14. TERMINATION OF INJUNCTION**

25 At any time after this Final Judgment has been in effect for five (5) years, and KMART has
26 paid all amounts due hereunder, KMART may, with notice to plaintiff, file a motion requesting that
27 the Court order that the permanent injunctive provisions of Paragraphs 4.1.a through 4.1.t shall have
28 no prospective force or effect based on KMART's demonstrated history of compliance with the Final

Judgment and to have the stayed penalty of one million six hundred thousand dollars excused. Within thirty (30) days of the filing of KMART's motion, the People will either: take no action, file a statement of non-opposition, or file an opposition. If the People agree that KMART has substantially complied with the obligations set forth in the Final Judgment, the People will file a statement of non-opposition to KMART's motion. Otherwise, the People may file an opposition setting forth the People's reasoning and will recommend that the Final Judgment, including the injunctive provisions, remain in effect. Within fifteen (15) days of any filing by the People, KMART may file a reply. The Parties agree that the Court may grant KMART's request upon determining that KMART has substantially complied with the obligations set forth herein.

15. CONTINUING JURISDICTION

The Parties agree that this Court has jurisdiction to interpret and enforce the Final Judgment. The Court shall retain continuing jurisdiction to enforce the terms of this Final Judgment and to address any other matters arising out of or regarding this Final Judgment.

16. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS

On reasonable notice and subject to all of the defenses KMART has to requests for documents made by subpoena or other formal legal process or discovery, KMART shall permit any duly authorized representative of the People to inspect and copy KMART's records and documents as they deem reasonably necessary to determine whether KMART is in compliance with the terms of this Final Judgment. Nothing in this paragraph is intended to require access to or production of any documents that are protected from production or disclosure by the attorney-client privilege, attorney work product doctrine or any other applicable privilege afforded to KMART under applicable law.

17. PAYMENT OF LITIGATION EXPENSES AND FEES

KMART shall pay its own attorney fees, expert witness fees and costs and all other costs of litigation and investigation incurred to date.

18. INTERPRETATION

This Final Judgment was drafted equally by all Parties. The Parties agree that the rule of construction holding that ambiguity is construed against the drafting party shall not apply to the interpretation of this Final Judgment.

1 **19. COUNTERPART SIGNATURES**

2 This Final Judgment may be executed by the Parties in counterpart.

3 **20. ENTRY AFTER NOTICED MOTION**

4 The Parties seek approval of this Final Judgment on noticed motion and have requested that
5 the Court make a determination that the Final Judgment is fair and in the public interest.

6 **21. INTEGRATION**

7 This Final Judgment constitutes the entire agreement between the Parties and may not be
8 amended or supplemented except as provided for in the Final Judgment. No oral representations
9 have been made or relied upon other than as expressly set forth herein.

10 **22. MODIFICATION OF FINAL JUDGMENT**

11 This Final Judgment may be modified only on noticed motion by a Party with approval of
12 the Court, or upon written consent of the Parties and the approval of the Court.

13 **23. STATUS REPORTS**

14 Beginning one year after entry of this Final Judgment and annually thereafter each year that
15 the injunction remains in effect, KMART shall file a status report for each year. The status report
16 shall briefly summarize the actions that KMART has taken during the previous year in order to
17 comply with its obligations under this Final Judgment, and shall set forth any penalties KMART has
18 paid to any governmental agency for noncompliance. Each status report shall be signed by
19 KMART's President, Vice-President, or other officer authorized to bind KMART, under penalty of
20 perjury. Each certification shall read as follows:

21 “To the best of my knowledge, based on information and belief and after reasonable
22 investigation, I certify that the information contained in or accompanying this submission is true,
23 accurate, and complete. I am aware that there are civil and criminal penalties for submitting false
24 information.”

25 **24. INCORPORATION OF EXHIBITS**

26 Each of the Exhibits is incorporated herein by reference.
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IT IS SO STIPULATED.

FOR THE PEOPLE:

GREGORY D. TOTTON, District Attorney
County of Ventura, State of California

DATED: 5/7/09

By: *Mitchell F. Disney*
MITCHELL F. DISNEY
Senior Deputy District Attorney
Attorneys for Plaintiff

JAMES P. WILLETT, District Attorney
County of San Joaquin, State of California

DATED: 5/6/09

By: *David J. Irey*
DAVID J. IREY
Supervising Deputy District Attorney
Attorneys for Plaintiff

ROD PACHECO, District Attorney
County of Riverside, State of California

DATED: 5/7/09

By: *Stephanie B. Weissman*
STEPHANIE B. WEISSMAN
Supervising Deputy District Attorney
Attorneys for Plaintiff

EDMUND G. BROWN JR., Attorney General
State of California

DATED: _____

By: _____
MARGARITA PADILLA
Supervising Deputy Attorney General
Attorneys for Plaintiff

FOR DEFENDANT:

KMART CORPORATION

DATED: _____

By: _____
MARY TORTORICE
Vice President, Deputy General Counsel

1 **IT IS SO STIPULATED.**

2 **FOR THE PEOPLE:**

GREGORY D. TOTTEN, District Attorney
County of Ventura, State of California

3
4
5 DATED: _____

By: _____
MITCHELL F. DISNEY
Senior Deputy District Attorney
Attorneys for Plaintiff

6
7
8 JAMES P. WILLETT, District Attorney
County of San Joaquin, State of California

9
10 DATED: _____

By: _____
DAVID J. IREY
Supervising Deputy District Attorney
Attorneys for Plaintiff

11
12
13 ROD PACHECO, District Attorney
County of Riverside, State of California

14
15 DATED: _____

By: _____
STEPHANIE B. WEISSMAN
Supervising Deputy District Attorney
Attorneys for Plaintiff

16
17
18 EDMUND G. BROWN JR., Attorney General
State of California

19
20 DATED: May 6, 2009

By: Margarita Padilla
MARGARITA PADILLA
Supervising Deputy Attorney General
Attorneys for Plaintiff

21
22
23 **FOR DEFENDANT:**

24 KMART CORPORATION

25
26 DATED: _____

By: _____
MARY TORTORICE
Vice President, Deputy General Counsel

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IT IS SO STIPULATED.

FOR THE PEOPLE:

GREGORY D. TOTTEN, District Attorney
County of Ventura, State of California

DATED: _____

By: _____

MITCHELL F. DISNEY
Senior Deputy District Attorney
Attorneys for Plaintiff

JAMES P. WILLETT, District Attorney
County of San Joaquin, State of California

DATED: _____

By: _____

DAVID J. IREY
Supervising Deputy District Attorney
Attorneys for Plaintiff

ROD PACHECO, District Attorney
County of Riverside, State of California

DATED: _____

By: _____

STEPHANIE B. WEISSMAN
Supervising Deputy District Attorney
Attorneys for Plaintiff

EDMUND G. BROWN JR., Attorney General
State of California

DATED: _____

By: _____

MARGARITA PADILLA
Supervising Deputy Attorney General
Attorneys for Plaintiff

FOR DEFENDANT:

KMART CORPORATION

DATED: 5/6/09

By: MARY TORTORICE

MARY TORTORICE
Vice President, Deputy General Counsel

1
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3 REVIEWED AS TO FORM:

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5 DATED:

May 6, 2009

By:

Michael Jacob Steel

Michael Jacob Steel
Morrison & Foerster LLP
Attorneys for Defendant KMART Corporation

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11 IT IS SO ORDERED.

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14 DATED:

12 May 2009

By:

Hintz

Superior Court Judge

1 **Additional Counsel for Plaintiffs**

2 JAMES P. WILLETT

3 District Attorney of the County of San Joaquin

4 DAVID IREY, SBN 142864

5 Supervising Deputy District Attorney

6 Environmental Prosecutions Unit

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18 GREGORY D. TOTTON

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20 MITCHELL F. DISNEY SBN138114

21 Senior Deputy District Attorney

22 5720 Ralston Street Suite 300

23 Ventura, CA 93009

24 Telephone: (805) 662-1706, Facsimile: (805) 662-1770

EXHIBIT A

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Store	FORMAT	Address	City	State	Zip	County
4457	KMART	26231 MISSION BLVD	HAYWARD	CA	94544	ALAMEDA
3276	KMART	250 FLORESTA BLVD	SAN LEANDRO	CA	94578	ALAMEDA
3568	KMART	10500 WICKLOW WAY	JACKSON	CA	95642	AMADOR
3086	KMART	2155 PILLSBURY RD	CHICO	CA	95926	BUTTE
9551	KMART	6600 CLARK ROAD	PARADISE	CA	95969	BUTTE
4762	KMART	3625 EAST 18TH ST	ANTIOCH	CA	94509	CONTRA COSTA
7098	KMART	5100 CLAYTON ROAD	CONCORD	CA	94521	CONTRA COSTA
3531	KMART	1500 FITZGERALD DR	PINOLE	CA	94564	CONTRA COSTA
3053	KMART	77 CHILPANCINGO	PLEASANT HILL	CA	94523	CONTRA COSTA
7471	KMART	3968 A MISSOURI FLAT ROAD	PLACERVILLE	CA	95667	EL DORADO
9153	KMART	1056 EMERALD BAY ROAD	SOUTH LAKE TAHOE	CA	96150	EL DORADO
3582	KMART	1075 SHAW AVENUE	CLOVIS	CA	93612	FRESNO
4721	KMART	25 WEST POLK STREET	COALINGA	CA	93210	FRESNO
4705	KMART	333 SIERRA	KINGSBURG	CA	93631	FRESNO
7916	KMART	4325 BROADWAY	EUREKA	CA	95503	HUMBOLDT
7390	KMART	1500 ANNA SPARKS WAY	MCKINLEYVILLE	CA	95521	HUMBOLDT
3151	KMART	1950 NORTH IMPERIAL AVE	EL CENTRO	CA	92243	IMPERIAL
7756	KMART	1200 N MAIN STREET	BISHOP	CA	93514	INYO
4364	KMART	3600 WILSON RD	BAKERSFIELD	CA	93309	KERN
3945	KMART	912 COUNTY LINE RD	DELANO	CA	93215	KERN
3865	KMART	910 NORTH CHINA LAKE BLVD	RIDGECREST	CA	93555	KERN
7287	KMART	301 GARDNER FIELD ROAD	TAFT	CA	93268	KERN
4751	KMART	710 W TEHACHAPI	TEHACHAPI	CA	93561	KERN
3968	KMART	2785 HWY 46	WASCO	CA	93280	KERN
3982	KMART	215 WEST HANFORD/ARMONA	LEMOORE	CA	93245	KINGS
4819	KMART	2019 S MAIN	LAKEPORT	CA	95453	LAKE
4320	KMART	10400 ROSECRANS	BELLFLOWER	CA	90706-2703	LOS ANGELES
3834	KMART	1000 SAN FERNANDO RD	BURBANK	CA	91504	LOS ANGELES
4987	SUPER K	500 CARSON TOWN CENTER	CARSON	CA	90745	LOS ANGELES
4007	KMART	5704 E WHITTIER BLVD HARVLAN CENTER	COMMERCE	CA	90022	LOS ANGELES
4281	KMART	1162 N CITRUS AVE	COVINA	CA	91722	LOS ANGELES
3337	KMART	8017 SOUTH ATLANTIC AVE	CUDAHY	CA	90201	LOS ANGELES
3169	KMART	249 S DIAMOND BAR BLVD	DIAMOND BAR	CA	91765	LOS ANGELES
4191	KMART	902 W SEPULVEDA	HARBOR CITY	CA	90710	LOS ANGELES

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Store	FORMAT	Address	City	State	Zip	County
4367	KMART	1810 W AVENUE J	LANCASTER	CA	93534	LOS ANGELES
9328	KMART	2900 BELLFLOWER BOULEVARD	LONG BEACH	CA	90815	LOS ANGELES
7225	KMART	6310 W 3RD STREET	LOS ANGELES	CA	90036	LOS ANGELES
7625	KMART	5850 S VERMONT AVENUE	LOS ANGELES	CA	90044	LOS ANGELES
4421	KMART	13007 SHERMAN WAY	NORTH HOLLYWOOD	CA	91605	LOS ANGELES
3127	KMART	5665 N ROSEMEAD BLVD	TEMPLE CITY	CA	91780	LOS ANGELES
4474	KMART	19330 HAWTHORNE BLVD	TORRANCE	CA	90503	LOS ANGELES
3018	KMART	23222 W VALENCIA BLVD	VALENCIA	CA	91355	LOS ANGELES
3235	KMART	730 SOUTH ORANGE	WEST COVINA	CA	91790	LOS ANGELES
7481	KMART	1085 BELLEVUE	ATWATER	CA	95301	MERCED
3764	KMART	1400 MERCY SPRINGS	LOS BANOS	CA	93635	MERCED
3412	KMART	1050 NORTH DAVIS ROAD	SALINAS	CA	93907	MONTEREY
9746	KMART	111 W MC KNIGHT WAY	GRASS VALLEY	CA	95949	NEVADA
3363	KMART	10870 KATELLA AVE WEST	ANAHEIM	CA	92804	ORANGE
3435	KMART	2222 E LINCOLN AVE EAST ANAHEIM SHOPPING CTR	ANAHEIM	CA	92806	ORANGE
4047	KMART	2200 HARBOR BLVD	COSTA MESA	CA	92627	ORANGE
9608	KMART	2505 BELL RD	AUBURN	CA	95603	PLACER
3696	KMART	5615 PACIFIC STREET	ROCKLIN	CA	95677	PLACER
3708	KMART	300 S HIGHLAND SPRINGS	BANNING	CA	92220	RIVERSIDE
3881	KMART	1455 W HOBSON	BLYTHE	CA	92225	RIVERSIDE
4857	KMART	14011 PALM DRIVE	DESERT HOT SPRINGS	CA	92240	RIVERSIDE
7047	KMART	220 W STETSON AVE	HEMET	CA	92543-7741	RIVERSIDE
7551	KMART	81691 HWY 111	INDIO	CA	92201	RIVERSIDE
3106	KMART	7200 ARLINGTON AVE	RIVERSIDE	CA	92503	RIVERSIDE
4432	KMART	3001 IOWA AVENUE	RIVERSIDE	CA	92507	RIVERSIDE
4706	KMART	375 EAST ALLESSANDRO BLVD	RIVERSIDE	CA	92508	RIVERSIDE
7175	KMART	7840 LIMONITE AVE	RIVERSIDE	CA	92509	RIVERSIDE
3828	KMART	26471 YNEZ ROAD	TEMECULA	CA	92591	RIVERSIDE
3376	KMART	8501 AUBURN BLVD	CITRUS HGTS	CA	95610	SACRAMENTO
3369	KMART	2344 SUNRISE BLVD	RANCHO CORDOVA	CA	95670	SACRAMENTO
4117	KMART	5100 STOCKTON BLVD	SACRAMENTO	CA	95820	SACRAMENTO
3748	KMART	491 TRES PINOS ROAD	HOLLISTER	CA	95023	SAN BENITO
3699	KMART	20777 BEAR VALLEY RD	APPLE VALLEY	CA	92308	SAN BERNARDINO

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Store	FORMAT	Address	City	State	Zip	County
7653	KMART	P O BOX 7047	BIG BEAR LAKE	CA	92315	SAN BERNARDINO
7587	KMART	17099 VALLEY BLVD	FONTANA	CA	92335	SAN BERNARDINO
7606	KMART	16968 MAIN STREET	HESPERIA	CA	92345	SAN BERNARDINO
3483	KMART	2530 S EUCLID AVE	ONTARIO	CA	91762	SAN BERNARDINO
4749	KMART	1670 EAST FOURTH	ONTARIO	CA	91764	SAN BERNARDINO
3368	KMART	1625 W REDLANDS	REDLANDS	CA	92373	SAN BERNARDINO
7636	KMART	875 EAST H STREET	CHULA VISTA	CA	91910	SAN DIEGO
3922	KMART	443 COLLEGE BLVD	OCEANSIDE	CA	92057	SAN DIEGO
3678	KMART	1855 MAIN STREET	RAMONA	CA	92065	SAN DIEGO
7418	KMART	4330 CAMINO DE LA PLAZA	SAN YSIDRO	CA	92173	SAN DIEGO
7486	KMART	520 S CHEROKEE LANE	LODI	CA	95240	SAN JOAQUIN
4862	KMART	255 NORHTGATE DRIVE	MANTECA	CA	95336	SAN JOAQUIN
3174	KMART	2180 E MARIPOSA RD	STOCKTON	CA	95205	SAN JOAQUIN
7552	KMART	1570 W BRANCH ST	ARROYO GRANDE	CA	93420	SAN LUIS OBISPO
7619	KMART	3980 EL CAMINO REAL	ATASCADERO	CA	93422	SAN LUIS OBISPO
4349	KMART	1155 VETERAN'S BLVD	REDWOOD CITY	CA	94063	SAN MATEO
3595	KMART	1700 S DELAWARE	SAN MATEO	CA	94402	SAN MATEO
7195	KMART	6865 HOLLISTER AVE	GOLETA	CA	93117	SANTA BARBARA
4371	KMART	2875 SANTA MARIA WAY	SANTA MARIA	CA	93455	SANTA BARBARA
3725	KMART	1702 FREEDOM BLVD	FREEDOM	CA	95019	SANTA CRUZ
9797	KMART	270 MT HERMON ROAD	SCOTTS VALLEY	CA	95066	SANTA CRUZ
3130	KMART	2685 HILLTOP DRIVE	REDDING	CA	96002	SHASTA
4341	KMART	2525 N TEXAS ST	FAIRFIELD	CA	94533	SOLANO
3501	KMART	261 N MC DOWELL BLVD	PETALUMA	CA	94954	SONOMA
4340	KMART	3771 CLEVELAND AVE	SANTA ROSA	CA	95403	SONOMA
3345	KMART	1351 E HATCH RD	MODESTO	CA	95351	STANISLAUS
3842	KMART	175 SOUTH MAAG AVENUE	OAKDALE	CA	95361	STANISLAUS
3162	KMART	850 GRAY AVE	YUBA CITY	CA	95991	SUTTER
9761	KMART	3247 NOBLE AVE	VISALIA	CA	93277	TULARE
3998	KMART	2270 EAST EL MONTE WAY	DINUBA	CA	93618	TULARE
3916	KMART	1475 HILLMAN STREET	TULARE	CA	93274	TULARE
7165	KMART	940 ARNEILL RD	CAMARILLO	CA	93010	VENTURA
7639	KMART	895 FAUKNER ROAD	SANTA PAULA	CA	93060	VENTURA

EXHIBIT B

EXHIBIT B
(Disbursement of Civil Penalties)

Attorney General or District Attorney Office Receiving Civil Penalties	Business and Professions Code § 17200 Penalties	Health and Safety Code § 25515.2 Penalties	Total of Penalty Payments
Attorney General*	\$ 415,750.00	\$ 300,000.00	\$ 715,750.00
Riverside**	\$ 794,750.00		\$ 794,750.00
San Joaquin	\$ 794,750.00		\$ 794,750.00
Ventura	\$ 794,750.00		\$ 794,750.00
	\$ 2,800,000.00	\$ 300,000.00	\$ 3,100,000.00
Regulatory/Law Enforcement Agencies Receiving Civil Penalties			
Oxnard Fire Department/CUPA		\$ 30,000.00	\$ 30,000.00
Riverside County Department of Environmental Health - Hazardous Materials Division		\$ 150,000.00	\$ 150,000.00
Ventura County Environmental Health		\$ 120,000.00	\$ 120,000.00
		\$ 300,000.00	\$ 300,000.00
Total Penalties and Costs Paid			\$ 3,400,000.00
These penalty splits are made pursuant to B&P Code §17206, Gov. Code 26506 and H&S Code §25515.2			

* Pursuant to Paragraph 3.1.a, KMART shall pay the Attorney General penalties in the total amount of Seven Hundred Fifteen Thousand Seven Hundred Fifty Dollars (\$715,750.00), of which Three Hundred Thousand Dollars (\$300,000.00) are for penalties pursuant to Health & Safety Code section 25515.2 and Four Hundred Fifteen Thousand Seven Hundred Fifty Dollars (\$415,750.00) are for penalties pursuant to Business and Professions Code section 17206. KMART shall make the check payable to the "California Department of Justice-Litigation Deposit Fund." The check shall bear on its face the case name ("People v. KMART") and the internal docket number for this matter

1 (OK2007900052). The money paid to the Attorney General pursuant to Paragraph 3.1.a shall be
2 administered by the California Department of Justice and shall be used by the Environment Section
3 of the Public Rights Division of the Attorney General's Office, until all funds are exhausted, for any
4 of the following purposes: (1) implementation of the Attorney General's authority to protect the
5 environment and natural resources of the State pursuant to Government Code section 12600 et seq.
6 and as Chief Law Officer of the State of California pursuant to Article V, section 13 of the California
7 Constitution; (2) enforcement of laws related to environmental protection, including, but not limited
8 to, Chapters 6.5 and 6.95, Division 20, of the California Health and Safety Code; (3) enforcement of
9 the Unfair Competition Law, Business and Professions Code section 17200, et seq., as it relates to
10 protection of the environment and natural resources of the State of California; and (4) other
11 environmental actions which benefit the State of California and its citizens as determined by the
12 Attorney General. Such funding may be used for the costs of the Attorney General's investigation,
13 filing fees and other court costs, payment to expert witnesses and technical consultants, purchase of
14 equipment, laboratory analyses, personnel costs, travel costs, and other costs necessary to pursue
15 environmental actions investigated or initiated by the Attorney General for the benefit of the State of
16 California and its citizens. The payment, and any interest derived therefrom shall solely and
17 exclusively augment the budget of the Attorney General's Office as it pertains to the Environment
18 Section of the Public Rights Division and in no manner shall supplant or cause any reduction of any
19 portion of the Attorney General's budget.

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** All of the Riverside County District Attorney's Office civil penalties assessed in this
matter shall be deposited in the Consumer Protection Prosecution Account in the general fund of
Riverside County.

EXHIBIT C

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3. CUPA Forum Board Environmental Protection Prosecution Trust Fund. KMART shall provide the amount of One Hundred Thousand Dollars (\$100,000.00) to the Environmental Protection Prosecution Trust Fund, which is administered by the California Certified Unified Program Agency (CUPA) Forum Board, to be used by that Board for purposes consistent with their Trust's mission. These funds shall be used by the Trust to assist with the Forum Board's training mission, specifically for training opportunities other than their Annual CUPA Forum Board Conference. If the payment is accepted by this designated entity, it shall provide annual letter reports, until the exhaustion of the funds describing the specific use of the funds and the type of training provided. The reports shall be submitted to the Plaintiff's representatives of this Judgment.

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3 **4. Cal CUPA Forum Board Targeted Training Funding.** KMART shall provide the
4 total amount of Twenty Two Thousand Five Hundred Dollars (\$22,500.00) to the California
5 Certified Unified Program Agency (Cal CUPA Forum Board) to be used by the Riverside County
6 District Attorney and the Riverside County Environmental Health Department to fund
7 enforcement training programs for their local environmental enforcement personnel.
8

9 **5. Cal CUPA Forum Board Targeted Training Funding.** KMART shall provide the total
10 amount of Twenty Two Thousand Five Hundred Dollars (\$22,500.00) to the California Certified
11 Unified Program Agency (Cal CUPA Forum Board) to be used by the San Joaquin County
12 District Attorney and the San Joaquin County Environmental Health Department to fund
13 enforcement training programs for their local environmental enforcement personnel.
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16 **6. Cal CUPA Forum Board Targeted Training Funding.** KMART shall provide the total
17 amount of Ten Thousand Dollars (\$10,000.00) to the California Certified Unified Program
18 Agency (Cal CUPA Forum Board) to be used by the Oxnard Fire Department to enforcement
19 training programs for their local environmental enforcement personnel.
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21 **7. Cal CUPA Forum Board Targeted Training Funding.** KMART shall provide the total
22 amount of Twelve Thousand Five Hundred Dollars (\$12,500.00) to the California Certified
23 Unified Program Agency (Cal CUPA Forum Board) to be used by the Ventura County
24 Environmental Health Department to fund enforcement training programs for their local
25 environmental enforcement personnel.
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1 **8. Attorney General Targeted Training Funding.** KMART shall provide the total
2 amount of Twenty Two Thousand Five Hundred Dollars (\$22,500.00) to the California Attorney
3 General's Office by check made payable to the "California Department of Justice-Litigation
4 Deposit Fund." The check shall bear the case name (People v. KMART) and the internal docket
5 number for this matter ("OK2007900052"). The monies shall be administered by the California
6 Department of Justice and are to be used by the Environment Section of the Public Rights
7 Division of the Attorney General's Office to fund environmental protection and enforcement
8 training programs.
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11 **9. Riverside County.** KMART shall provide the amount of Ten Thousand Dollars
12 (\$10,000.00) to the Riverside County Waste Management Department for hazardous materials
13 identification and management training or needed equipment for the load checker program.
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EXHIBIT D

EXHIBIT D

Kmart Supplemental Environmental Projects

In order to satisfy the requirements of paragraph 3.2.b of the Final Judgment, Kmart will implement the following Supplemental Environmental Projects ("Kmart SEPs"), or some combination thereof, within five years following entry of the Final Judgment. Upon request by the People, Kmart shall provide documentation substantiating expenditures made by it or on its behalf (including vendor subscription costs) up to a total of \$2,500,000 (two million five hundred thousand dollars). Once Kmart has spent a total of \$2,500,000 for Kmart SEPs, it shall have no further obligations with respect to the Kmart SEPs.

Enhanced Hazard Data Storage and Retrieval System

Acquisition, design and implementation of a new MSDS storage and retrieval solution that will result in better compliance with both Federal and California laws and regulations primarily related to: hazardous material spill handling, hazardous waste storage and hazardous waste disposal. A primary purpose of this program is to ensure complete, accurate material safety data sheets are available for all hazardous products, and that this information is available to employees who must make decisions about classification of waste for disposal. Each material safety data sheet shall contain at least the following information: physical and chemical properties of the hazardous substance (such as vapor pressure, flash point); the physical hazards of the hazardous substance, including the potential for fire, explosion, and reactivity; and any generally applicable precautions for safe handling and use which are known to the manufacturer, importer, or employer preparing the material safety data sheet, including the appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for cleanup of spills and leaks. Each material safety data sheet should, whenever possible, contain information related to the possible incompatible storage of wastes. Kmart shall be entitled to reasonably rely upon such enhanced information when making decisions regarding the treatment, storage, transportation and disposal of products and wastes. The project costs include software implementation, monthly hosting fees (projected 5 years) and vendor costs.

Kmart Green Website

Design and implementation of Kmart Green Website where consumers can learn about the environmental consequences of their product choices, how to manage and dispose of hazardous products, and available green products or products that promote a green lifestyle. Includes content development, licensing of interactive web based teaching tools for consumers and systematic green product identification.

Tote Upgrade

Replace short-term storage containers with special totes (completed).

Dedicated Field Manager

Hire and train dedicated field manager with knowledge and understanding of specific California legal requirements applicable to hazardous waste management to provide training, guidance and compliance assessment to Kmart's California stores (completed).

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Additional Oversight and Compliance Assistance

Kmart will provide additional oversight and compliance assistance by: (1) conducting quarterly headquarters audits of one or more California stores on a random basis; (2) requiring regional management to visit every California store at least once per year to inspect the waste management practices; and (3) providing 24-hour hotline assistance to the stores to answer questions and provide directions when hazardous waste issues arise. This oversight is expected to approximate the equivalent of one full-time employee, although the oversight will be provided by multiple people at various levels of the company.

California Energy Efficiency Retrofit Program

Major overhaul of at least four stores and one distribution facility to make them more energy efficient.

Carbon Footprint Identification and Improvement Program

Design, acquisition and implementation of program that will estimate Kmart's carbon footprint on an ongoing basis, identifying opportunities for continuous improvement in efficiency and reduction in greenhouse gas emissions.

EXHIBIT E

EXHIBIT E
(Costs)

Attorney General*	\$ 120,375.00
Riverside County District Attorney	\$ 41,375.00
San Joaquin County District Attorney	\$ 41,375.00
Ventura County District Attorney	\$ 41,375.00
Department of Toxic Substances Control	\$ 4,571.18
Riverside County CUPA	\$ 500.00
Ventura County Environmental Health Division	\$ 49,266.82
Oxnard Fire - CUPA	\$ 1,162.00
TOTAL	\$ 300,000.00

* Pursuant to Paragraph 3.3, KMART shall pay the California Attorney General One Hundred Twenty Thousand Three Hundred Seventy Five Dollars (\$120,375.00) by a company check made payable to the "California Department of Justice-Litigation Deposit Fund," for partial reimbursement of attorney's fees, costs of investigation and other enforcement costs incurred in connection with this matter. The check shall bear on its face the case name ("People v. KMART"), the internal docket number for this matter (OK2007900052) and the notation of "Fees and Costs." The money paid to the Attorney General pursuant to Paragraph 3.3 shall be administered by the California Department of Justice and shall be used by the Environment Section of the Public Rights Division of the Attorney General's Office, until all funds are exhausted, for any of the following purposes: (1) implementation of the Attorney General's authority to protect the environment and natural resources of the State pursuant to Government Code section 12600 et seq. and as Chief Law Officer of the State of California pursuant to Article V, section 13 of the California Constitution; (2) enforcement of laws related to environmental protection, including, but not limited to, Chapters 6.5 and 6.95, Division 20 of the California Health and Safety Code; (3) enforcement of the Unfair Competition Law, Business and Professions Code section 17200, et seq., as it relates to protection of the environment and natural resources of the State; and (4) other environmental actions which benefit the State of California and its citizens as determined by the Attorney General. Such funding may be used for the costs of the Attorney General's investigation, filing fees and other court costs, payment to expert witnesses and technical consultants, purchase of equipment, laboratory analyses, personnel costs, travel costs, and other costs necessary to pursue environmental actions investigated or initiated by the Attorney General for the benefit of the State of California and its citizens. The payment, and any interest derived there from shall solely and exclusively augment the budget of the Attorney General's Office as it pertains to the Environment Section of the Public Rights Division and in no manner shall supplant or cause any reduction of any portion of the Attorney General's budget.