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8 *People of the State of California*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF CONTRA COSTA

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12
13 **PEOPLE OF THE STATE OF**
14 **CALIFORNIA,**

15 Plaintiff,

16 v.

17 **GOLDEN GATE PETROLEUM CO., a**
18 **California corporation; BAY**
AREA/DIABLO PETROLEUM
19 **COMPANY, a California corporation;**
WESTGATE PETROLEUM COMPANY,
20 **INC., a California corporation, and DOES 1**
through 100,

21 Defendants.
22

Case No. MSC 07 02593

**ORDER GRANTING MOTION TO
ENFORCE AMENDED FINAL
JUDGMENT ON CONSENT AND
ASSESS SUSPENDED PENALTY**

Date : February 9, 2017
Time: 8:30 a.m.
Dept: 17
Judge: Honorable Barry Goode

1 This matter came before the Court on February 9, 2017. Plaintiffs, People of the State of
2 California were represented by Deputy Attorney General, Reed Sato, and Deputy District
3 Attorney, Caroline Fowler, for the County of Sonoma. Defendants were represented by Mark S.
4 Pollock, Pollock & James LLP.

5 The People of the State of California (“State” or “People”), the plaintiff in this case,
6 brought a motion to enforce the amended final judgment (“AFJ”) the Court entered in this matter
7 on November 22, 2011 (the “Motion”). The Motion is opposed by defendants Golden Gate
8 Petroleum Co. (“Golden Gate”), Bay Area/Diablo Petroleum Company (“Diablo”), and Westgate
9 Petroleum Company, Inc. (“Westgate”) (collectively, “Defendants”).

10 **Evidentiary Matters**

11 The Court first addresses the evidentiary objections made by the People.

12 O’Keefe Declaration

13 The Court sustains Objection No. 1 to the O’Keefe declaration. This ruling renders the
14 remainder of the objections moot.

15 Pollock Declaration

16 Objection No. 1: Overruled.

17 Objection No. 2: Overruled. To the extent the phrase “timely notice” is a legal conclusion,
18 the Court will determine whether the notice was “timely” or otherwise proper by examining the
19 terms of the AFJ; the objection goes to weight, not admissibility.

20 Objection No. 3: Overruled.

21 Objection No. 4: Overruled.

22 Objection No. 5: Sustained. Mr. Pollock’s comments on the intent of section F.2.10 is
23 irrelevant. The terms of the AFJ speak for themselves.

24 Objection No. 6: Sustained. Mr. Pollock’s professional opinion concerning the necessity of
25 a “full blown evidentiary hearing” is irrelevant. The terms of the AFJ speak for themselves. The
26 evidence adduced by the People in support of the Motion speaks for itself; the Court will evaluate
27 that evidence and make all necessary determinations concerning what weight to give that
28 evidence.

1 Objection No. 7: Sustained. The terms of the AFJ concerning the procedure to follow in this
2 matter speak for themselves.

3 Objection No. 8: Sustained. Lacks foundation.

4 Objection No. 9: Overruled. The Court will evaluate the evidence appended to the various
5 declarations; the State's objection goes to the weight of Mr. Pollock's testimony, not its
6 admissibility

7 **The Motion**

8 In opposition, Defendants contend that an evidentiary hearing is required to determine if the
9 alleged violations occurred, and that the People failed to comply with the notice requirements
10 contained in the AFJ.

11 Paragraph C.3.1(b), found on pages 8-9 of the AFJ, provides, in relevant part, as follows:

12 If Defendants contend that the alleged violation did not occur or that Defendants are
13 not responsible for the alleged violation due to a Force Majeure ... the People may
14 file a noticed motion ... requesting that the court impose Suspended Penalties.
15 Defendants retain the right to oppose the motion on the grounds that the alleged
16 violation did not occur or that Defendants are not responsible for the alleged violation
17 due to a Force Majeure ... At least ten (10) days before filing a motion seeking a
18 Suspended Penalty, the People shall seek to meet and confer in good faith with
19 Defendants to attempt to resolve the matter without judicial intervention.

20 Here, there appears to be no dispute that the State gave notice to Defendants and their
21 counsel in the summer of 2016. Indeed, the parties have been meeting and conferring for several
22 months.

23 In addition, it appears from the various inspection reports and e-mails that are attached to
24 the many declarations submitted by the State that Defendants were given the usual, routine notice
25 of violations as they were discovered.

26 The notice provided by the People complied with the terms of the AFJ, which is silent
27 concerning the timing of any required notice. The notice provided by the People did not deprive
28 Defendants of an opportunity to cure alleged violations, since the environmental coordinator –
whose specific job function was to collect copies of written advisements of violation and to
correct noted deficiencies or violations – had notice of the alleged violations at the time they were
noted by the People

1 In any event, if Defendants believe that the People violated the terms of the AFJ, they have
2 failed to show what damages, if any, flow from that violation that might offset the stipulated
3 penalties claimed by the State.

4 **The Evidence Supporting the Award of Suspended Penalties**

5 Defendants contend that they are entitled to an evidentiary hearing concerning the alleged
6 violations. That is not what they agreed to in the AFJ, which provides for a noticed motion
7 seeking the award of suspended penalties. (AFJ ¶¶ C.3.1(b); H.1.) It follows that in ruling on the
8 Motion, the Court must evaluate the evidence supporting and opposing the imposition of
9 suspended penalties and make a determination as to what suspended penalties, if any, to award.

10 The Court has sustained the State’s objection to Mr. O’Keefe’s declaration. But even if the
11 Court were to consider his testimony, it would not be very weighty. Mr. O’Keefe’s declaration
12 denies generally that various violations occurred, but does not affirmatively rebut any of the
13 evidence adduced by the People in support of the imposition of suspended penalties or otherwise
14 provide the Court any independent basis to conclude that the alleged violations did not occur.
15 After all this time – including several months of meeting and conferring on these issues – one
16 would expect that a competent declaration would tell Defendants’ side of the story, if there was
17 one to tell. The absence of substance is telling.

18 Mr. Pollock’s declaration identifies four specific problems with the evidence adduced by
19 the People. First, it says that the financial responsibility form for the San Jose facility was
20 completed properly, despite what Mr. Breshears’ declaration says. Second, it says that documents
21 relevant to the Kelseyville facility are not attached to the Gearhart declaration. Third, it says that
22 no inspection forms for the North Cloverdale facility have been provided to the Court. Fourth, it
23 says that some inspection forms for the San Jose facility have not been provided to the Court.

24 (Pollock Declaration ¶¶ 20, 23.)

25 *San Jose Financial Responsibility Form*

26 For purposes of this ruling, the Court will ignore the State’s claim regarding the financial
27 responsibility form.

28

1 *Kelseyville Facility*

2 Ms. Gearhart says she inspected the Kelseyville facility in April 2012 and noted various
3 violations. (Gearhart Declaration ¶¶ 5-12.) Ms. Gearhart says she inspected the Kelseyville
4 facility again in March 2013 and noted various violations. (Gearhart Declaration ¶¶ 13-20.) Ms.
5 Gearhart concludes by saying she again inspected the Kelseyville facility in March 2015 and
6 noted various violations. (Gearhart Declaration ¶¶ 21-24.) The fact that the inspection forms are
7 not attached goes only to the weight to be assigned to Ms. Gearhart’s declaration. Her sworn
8 testimony is detailed and satisfactory. The Court notes, however, that the largest proposed penalty
9 relates to the failure to have copies of hazardous waste manifests for the past three years. Ms.
10 Gearhart’s testimony is sufficient as to that. And, more importantly, if Defendants had such
11 manifests, they could easily have appended them to a declaration in opposition to the Motion.

12 *North Cloverdale Facility*

13 Mr. Parsons notes two separate inspections that uncovered violations. A May 6, 2014
14 inspection and a May 3, 2016 inspection. (Parsons Declaration ¶ 7; Ex. 5 [May 6, 2014
15 inspection]; Parsons Declaration ¶ 9 [May 3, 2016 inspection].)

16 With respect to the May 6, 2014 inspection, an inspection report is attached that
17 substantiates the alleged violations. There is no properly made evidentiary objection concerning
18 the fact that the inspection report was prepared by a different investigator within Mr. Parsons’
19 office; even if there were, Mr. Parsons has the requisite knowledge to authenticate that report.
20 The Court will award the appropriate penalties relative to the violations noted in the May 6, 2014
21 inspection, which Mr. Parsons says were cured on July 30, 2014.

22 However, the Court notes that all of the penalties sought by the State relating to North
23 Cloverdale amount to only about \$300,000 out of the more than \$10,000,000 listed. Thus, this is
24 hardly a dispute about a material amount.

25 *San Jose Inspection Forms*

26 Mr. Breshears says he inspected the San Jose facility on May 25 and 26, 2016 and noted
27 various violations. (Breshears Declaration ¶¶ 8-9.) The inspection report provided to the Court
28 indicates that the “inspection date” is May 26, 2016. However, on pages 4 and 10, the report

1 indicates that the inspection began on May 25 and concluded on May 26. The Court concludes
2 that all inspection forms for San Jose appear to be appended to the declaration of Mr. Breshears.
3 Mr. Pollock's declaration is not specific about what forms are missing.

4 **Disposition**

5 Even if the Court were to deduct the value of all of the violations contested by Defendants
6 with some evidence or cognizable argument, there would still be far more than \$3,000,000 in
7 suspended penalties to be awarded.

8 Thus, the Motion is granted.

9 The payment of \$3,000,000 shall be made within sixty (60) days of the date that this Order
10 is served on Defendants.

11 The payment shall be made by cashier's check to the "The California Department of
12 Justice" and sent to:

13 Office of the Attorney General
14 Reed Sato
15 Deputy Attorneys General
16 1300 I Street, Suite 125
17 P.O. Box 944255
18 Sacramento, CA 94244-2550

19 Or by overnight delivery to:

20 Office of the Attorney General
21 Reed Sato
22 Deputy Attorney General
23 1330 I Street, Suite 125
24 Sacramento, California 95814

25 Pursuant to Government Code Section 26506, the Attorney General shall seek to obtain the
26 agreement of all of the prosecuting offices and investigatory agencies participating in this motion
27 as to how the payment required by this Order shall be allocated between and among them. If an
28 agreement is reached the Attorney General shall file and serve a pleading memorializing that

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1 agreement and shall then shall distribute the funds accordingly. The Court reserves jurisdiction to
2 resolve any dispute with respect to that allocation.

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IT IS SO ORDERED:

Dated: March 13, 2017



Hon. Barry Goode
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Goode, o, ou,
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acosta.courts.ca.g
ov, c=US
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The Honorable Barry P. Goode
Judge, Superior Court of Contra Costa
County

Approved as to form:

Mark S. Pollock
Pollock & James, LLP
Attorneys for the Defendants