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1 Gideon Kracov (State Bar No. 179815)  
 LAW OFFICE OF GIDEON KRACOV  
 2 801 S. Grand Avenue, 11<sup>th</sup> Floor  
 Los Angeles, CA 90017-4645  
 3 Tel: (213) 629-2 071  
 Fax: (213) 623-7755  
 4 Email: gk@gideonlaw.net

5 Arthur Pugsley (State Bar No. 252200)  
 6 Melissa Kelly (State Bar No. 300817)  
 LOS ANGELES WATERKEEPER  
 7 120 Broadway, Suite 105  
 Santa Monica, CA 90401  
 8 Tel: (310) 394-6162  
 Fax: (310) 394-6178  
 9 Email: arthur@lawwaterkeeper.org  
 Email: melissa@lawwaterkeeper.org

10 Attorneys for Plaintiff LOS ANGELES WATERKEEPER

11  
 12 Scott S. Humphreys (State Bar No. 298021)  
 BALLARD SPAHR LLP  
 13 2029 Century Park East, Suite 800  
 Los Angeles, CA 90067-2909  
 14 Tel. (424) 204-4400  
 Fax. (424) 204-4350  
 15 Email: humphreyss@ballardspahr.com

16 Attorneys for Defendant TRIUMPH PROCESSING, INC.

17  
 18 UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 19

20 LOS ANGELES WATERKEEPER, a  
 21 non-profit corporation,

22 Plaintiff,

23 vs.

24 TRIUMPH PROCESSING, INC., a  
 25 corporation; DOES 1 through 10,

26 Defendants.  
 27  
 28

Case No.: 2:16-cv-07037 PSG (KSx)

**~~PROPOSED~~ CONSENT DECREE  
 AND ORDER**

**(Federal Water Pollution Control Act,  
 33 U.S.C. § 1251 *et seq.*)**

Judge: Hon. Phillip S. Gutierrez

1           **WHEREAS**, Los Angeles Waterkeeper (“Waterkeeper”) is a 501(c)(3) non-profit  
2 public benefit corporation organized under the laws of the State of California, with its  
3 main office in Santa Monica, California;

4           **WHEREAS**, Waterkeeper is dedicated to the preservation, protection and defense  
5 of the surface, ground, coastal and ocean waters of Los Angeles County from all sources  
6 of pollution and degradation;

7           **WHEREAS**, Triumph Processing, Inc. facilities are located at 2588 (“Plant 2) and  
8 2605 (“Plant 1”) Industry Way in Lynwood, California (“Triumph Facilities” or  
9 “Facilities”);

10           **WHEREAS**, the Facilities are owned and/or operated by Triumph Processing,  
11 Inc., a California corporation (“Defendant” or “Triumph”);

12           **WHEREAS**, Triumph as a matter of corporate policy has set as a priority being a  
13 good corporate citizen focused on making its local communities better places to live and  
14 work;

15           **WHEREAS**, on July 15, 2016, Waterkeeper sent a sixty (60) day notice letter  
16 (“Notice Letter”) to Defendant, the United States Environmental Protection Agency  
17 (“EPA”), EPA Region IX, the State Water Resources Control Board (“State Board”) and  
18 the Regional Water Quality Control Board (“Regional Board”), stating its intent to file  
19 suit for alleged violations of the Federal Water Pollution Control Act, 33 U.S.C.  
20 §§ 1251, *et seq.* (“Clean Water Act” or “CWA”). The Notice Letter alleged violations of  
21 the CWA for Defendant’s alleged discharges of pollutants into storm drains and  
22 receiving waters, including Compton Creek (“Creek”), the Los Angeles River (“River”)  
23 and ultimately the Pacific Ocean (collectively “Receiving Waters”), in alleged violation  
24 of National Pollution Discharge Elimination System (“NPDES”) General Permit No.  
25 CAS000001 [State Board] Water Quality Order No. 97-03-DWQ (“1997 Permit”), as  
26 superseded by Order No. 2014-0057-DWQ (“2015 Permit”). The 1997 Permit and/or  
27 2015 Permit may be referred to generically as the “Storm Water Permit”;

1           **WHEREAS**, during the 60-Day notice period, Triumph made significant efforts  
2 to review and improve stormwater management practices at Plant 1 and Plant 2,  
3 including installation of new stormwater management equipment and practices;

4           **WHEREAS**, during the notice period to the present LAW and Triumph have been  
5 in comprehensive, good-faith settlement negotiations, including a site visit to Plant 1 and  
6 Plant 2 on October 26, 2016, where LAW was able to inspect site conditions and the  
7 new stormwater management equipment installed by Triumph;

8           **WHEREAS**, sampling of stormwater discharges at Plant 1 and Plant 2 for the  
9 2016-2017 Reporting Year (July 1 to the following June 30) have shown very significant  
10 improvement, demonstrating the success of Triumph's new stormwater management  
11 equipment and practices, with nearly every sample result below the numeric limits set  
12 forth in the EPA's 2015 Multi-Sector General Permit.

13           **WHEREAS**, on October 19, 2016 Waterkeeper filed a complaint ("Complaint")  
14 against Defendant in the United States District Court, Central District of California  
15 (Case No. 2:16-cv-07037 PSG (KSx)), entitled *Los Angeles Waterkeeper v. Triumph*  
16 *Processing, Inc.*

17           **WHEREAS**, the Defendant denies all allegations of the Complaint;

18           **WHEREAS**, Plaintiff and Defendant (collectively referred to herein as the  
19 "Settling Parties" or "Parties") agree that it is in the Parties' mutual interest to enter into  
20 a Consent Decree setting forth terms and conditions appropriate to resolving the  
21 allegations set forth in the Complaint without further proceedings;

22           **WHEREAS**, all actions taken by the Defendant pursuant to this Consent Decree  
23 shall be made in compliance with all applicable federal, state and local rules and  
24 regulations;

25           **NOW THEREFORE FOR THE PURPOSE OF THIS CASE IT IS HEREBY**  
26 **STIPULATED BETWEEN THE SETTLING PARTIES AND ORDERED AND**  
27 **DECREEED BY THE COURT AS FOLLOWS:**

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1           1.     The Court has jurisdiction over the subject matter of this action pursuant to  
2 Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

3           2.     Venue is appropriate in the Central District Court pursuant to Section  
4 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the Facilities at which the  
5 alleged violations are taking place is located within this District;

6           3.     The Complaint states a claim upon which relief may be granted against  
7 Defendant pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

8           4.     Waterkeeper has standing to bring this action;

9           5.     The Court shall retain jurisdiction over this matter for purposes of  
10 interpreting, modifying or enforcing the terms of this Consent Decree, for as long as is  
11 necessary for the Court to resolve any motion to enforce this Consent Decree.

12 **I.     OBJECTIVES**

13           6.     It is the express purpose of the Parties entering into this Consent Decree to  
14 further the objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*, and to  
15 resolve those issues alleged by Waterkeeper in its Complaint. These objectives include  
16 compliance with the provisions of this Consent Decree, and compliance with the  
17 requirements of the 2015 Permit and all applicable provisions of the CWA which are the  
18 subject of this Consent Decree—specifically Receiving Water Limitations A, B and C at  
19 Section VI of the 2015 Permit, and Effluent Limitations A, B and C at Section V of the  
20 2015 Permit, which require, *inter alia*, that Defendant ensure that industrial storm water  
21 discharges and authorized non-stormwater discharges do not cause or contribute to an  
22 exceedance of any applicable Water Quality Standards (“WQS”), and implement Best  
23 Management Practices (“BMPs”) that comply with the Best Available Technology  
24 (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of  
25 the 2015 Permit. BMPs must be developed and implemented to prevent discharges or to  
26 reduce contamination in storm water discharged from the Facilities in compliance with  
27 this Consent Decree.  
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1 **II. EFFECTIVE DATE AND TERMINATION**

2 7. The term "Effective Date," as used in this Consent Decree, shall mean the  
3 date the Court enters the final Consent Decree.

4 8. This Consent Decree will terminate on its own terms two (2) years from the  
5 Effective Date (the "Termination Date"), unless there is a prior ongoing, unresolved  
6 dispute regarding Defendant's compliance with its terms as described in a Notice of  
7 Dispute filed with the Court prior to the Termination Date, which Notice shall identify  
8 the issue in dispute. The filing of such a Notice of Dispute shall extend the Termination  
9 Date until the Court determines the dispute has been resolved and thereupon dismisses  
10 the case, or, alternatively, if the Settling Parties file a stipulation for dismissal.

11 9. Triumph may move the Court to terminate the Consent Decree at any time  
12 provided that the following conditions, or such alternative conditions to which Triumph  
13 and Waterkeeper agree in writing after compliance with the meet and confer provisions  
14 of paragraph 44 below, are satisfied:

- 15 a. Defendant has fully implemented all measures detailed in paragraph 15 below,  
16 and all other applicable requirements to be completed under this Consent  
17 Decree prior to the date on which the Defendant moves for termination;
- 18 b. Defendant has revised and fully implemented its Storm Water Pollution  
19 Prevention Plans ("SWPPP") and Monitoring and Reporting Programs  
20 ("M&RP") pursuant to the requirements of this Consent Decree and the 2015  
21 Permit;
- 22 c. There are no ongoing, unresolved disputes regarding Defendant's compliance  
23 with this Consent Decree, including but not limited to any dispute related to  
24 the payment of fees/costs, Supplemental Environmental Project ("SEP")  
25 implementation, compliance monitoring fees, implementation of storm water  
26 and non-storm water control BMPs, and compliance with numeric levels  
27 detailed below at Table 1;
- 28

1 d. All payments required under sections F (paras. 35 and 36) and G (paras. 39-41)  
2 of this Consent Decree are made; and

3 e. Following the Effective Date, monitoring data from four (4) consecutive storm  
4 water samples collected at each discharge point demonstrate pollutant  
5 concentrations in stormwater discharges do not exceed the numeric levels in  
6 Table 1;

7 10. To terminate early as provided above, Defendant shall file a motion for  
8 early termination with the Court. Defendant shall provide Plaintiff and its counsel with  
9 written notice at least thirty-five (35) days prior to filing any motion for termination of  
10 the Consent Decree.

11 11. Upon receipt of the written request to terminate, Waterkeeper may conduct  
12 an inspection of the Facilities within thirty (30) calendar days and Triumph will work  
13 with Waterkeeper to schedule and accommodate the inspection, if requested, within the  
14 30-day period. During the Site Inspection, Defendant shall allow Waterkeeper and/or its  
15 representatives access to the Facilities' SWPPP, M&RP, and storm water monitoring  
16 records. Further, Defendants shall allow Waterkeeper and/or its representatives to  
17 collect during the site inspection split samples of storm water or non-stormwater  
18 discharges, if applicable, at the Facilities. Waterkeeper shall be permitted to take  
19 photographs or video recording during any Site Inspection and will, upon request,  
20 provide photographs and/or video to Triumph within fourteen (14) calendar days.  
21 Notwithstanding the foregoing, Waterkeeper agrees that all individuals participating in a  
22 Site Inspection will execute, and be subject to, waivers, releases and similar agreements  
23 as were executed in connection with the Site Inspection conducted on October 26, 2016,  
24 including but not limited to those forms establishing restrictions on allowed recorded  
25 documentary images or depictions.

26 12. Unless there is an ongoing, unresolved dispute regarding Defendant's  
27 compliance with this Consent Decree, thirty-five (35) calendar days after written notice  
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1 was given, Defendant may move the Court to terminate the Consent Decree and  
2 Waterkeeper shall not oppose the motion.

3 **III. COMMITMENTS OF THE PARTIES**

4 **A. Industrial Storm Water Pollution Control Measures**

5 13. Any non-stormwater discharges (“NSWDs”) from the Facilities must be  
6 authorized by the 2015 Permit or another NPDES permit.

7 14. All storm water pollution measures required by this Consent Decree will be  
8 implemented at the Facilities. Any disputes over the adequacy and/or timing of the  
9 implementation of BMPs shall be resolved pursuant to the dispute resolution provisions  
10 of this Consent Decree, set out in Section IV below.

11 15. BMP Plan. Triumph has implemented or will implement in connection with  
12 the sampling and discharge points depicted in the site maps attached hereto as Exhibit A  
13 the following additional BMPs by March 1, 2017, or the Effective Date of this Consent  
14 Decree, whichever occurs later;

- 15 a. Cover any and all product and crates outside of Plants 1 and 2 with an  
16 impermeable material (e.g. tarps, 10-15mm polyethylene sheeting) during a  
17 storm event or the threat of a storm event;
- 18 b. Maintain the existing BMP (multiple filter socks) at Discharge Point 2 (of  
19 Plant 1) prior to and during any/all storm events. Triumph shall, consistent  
20 with the action plan process detailed below in Paragraphs 23-27 of section C,  
21 install and maintain a more robust BMP if at any point during the term of this  
22 Consent Decree either of the two scenarios exist: i) analytical results  
23 demonstrate that the existing BMP is not effective (i.e. according to Paragraph  
24 23 below); or ii) Triumph becomes aware that the existing BMP is being over-  
25 topped, is bypassed or provides inadequate opportunity for water contact from  
26 discharges;
- 27 c. Perform weekly powered vacuum truck sweeping of all areas of outdoor  
28 industrial operations;
- d. Perform daily push-broom sweeping of the 50' x 50' area located directly east  
of the Plant 1 building and the area directly south of the northern yard wall  
(with higher potential for pollutant build up within the flow-path for Sample  
Point 2 at Plant 1);

- 1 e. Purchase and employ geo-textile covers for inlets at Sample Points 1 and 2 at  
2 Plant 2 for the purpose of preventing pollution from entering inlets during dry  
3 weather;  
4 f. Maintain inlets at Sample Points 1 and 2 (at Plant 2) with filters to allow for  
5 sampling after water contacts filter media; and  
6 g. Install a berm at Plant 2 to help prevent run-off onto or from neighboring  
7 property to the north, and pursue upgrades as needed to achieve adequate water  
8 tightness and structural integrity.

9 **B. Monitoring and Reporting Program (M&RP)**

10 16. Sample Frequency. The Defendant shall collect storm water samples in the  
11 event that discharges occur at the Facilities from at least four (4) qualifying storm events  
12 per Reporting Year in accordance with Section XI.B. of the 2015 Permit. Any failure to  
13 sample a discharge from each discharge location at the Facilities until the specified four  
14 (4) qualifying storm events per Reporting Year have been sampled shall be documented  
15 and submitted to Waterkeeper within ten (10) days of the date a sample was required to  
16 have been collected but was not.

17 17. Sample Analysis. The Defendant shall analyze samples collected in  
18 accordance with sampling and analysis procedures specified by the Permit for Total  
19 Suspended Solids, pH, Oil & Grease, Zinc, Nitrate + Nitrite Nitrogen, Aluminum, Iron,  
20 Chromium (total), as well as such additional constituents required by the Permit. The  
21 Defendant shall select laboratories and analytical limits such that, at a minimum, the  
22 method detection limits are below the numeric limits in Table 1.

23 18. Sample Analysis at Plant 1. The Defendant shall use Sample Point 1  
24 (located prior to any filter medium) for internal evaluation purposes only, and shall  
25 collect reportable storm water samples from each of the following locations at Plant 1:

- 26 a. Sample Point 2 [Northern Drainage Swale];  
27 b. Sample Point 3 [Southern Roof Drain Outlet].

28 19. Sample Analysis at Plant 2. The Defendant shall collect storm water  
samples from each of the following locations at Plant 2:

- a. Sample Point Inlet 1 [Control Yard Stormwater Collection Point]; and

1           b.     Sample Point Inlet 2 [Northern Storm Drain Inlet].

2           20.    Written Report. Defendant shall submit a written report to Waterkeeper at  
3 the end of each Reporting Year listing all storm events that occurred and resulted in a  
4 discharge at any of the Facilities' stormwater outfalls. The report shall be submitted on  
5 or before July 30 every year during the term of this Consent Decree and must include a  
6 table summarizing analytical results from Facilities' storm water samples and comparing  
7 those results to the numeric limits in Table 1.

8           21.    Revising the M&RP. Within thirty (30) calendar days of the Effective Date  
9 of this Consent Decree, Defendant shall revise its M&RP within its SWPPP for the  
10 Facilities to incorporate the requirements of this Consent Decree and the 2015 Permit.  
11 The Defendant shall submit the revised M&RP to Waterkeeper for review and comment  
12 as soon as it is completed but in any event no later than within thirty (30) calendar days  
13 following the Effective Date. Waterkeeper shall provide comments, if any, to the  
14 Defendant within thirty (30) calendar days following receipt of the revised M&RP. The  
15 Defendant shall incorporate Plaintiff's comments into the M&RP, or shall justify in  
16 writing why any comment is not incorporated within thirty (30) calendar days of  
17 receiving comments. Any disputes over the adequacy of the revised M&RP shall be  
18 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in  
19 Section IV below.

20           **C.     Numeric Limits**

21           22.    Numeric Limits. If sampling results show four or more exceedances of  
22 numeric limits in Table 1 at any one of the four Sample Points at Plants 1 and 2 in a  
23 single Reporting Year, Triumph shall comply with the requirements specified below in  
24 this Section III.C of this Consent Decree.  
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1 **Table 1. Numeric Limits**

2 <b>Contaminant</b>	<b>Numeric Limits</b>
3 Total Suspended Solids	100 mg/L
4 pH	6.0-9.0
5 Oil and Grease	15 mg/L
6 Nitrate + Nitrite Nitrogen	0.68 mg/L
Zinc	0.117 mg/L
Aluminum	0.75 mg/L
Iron	1.0 mg/L
Chromium (total)	Report only

7 23. Action Plan for Table 1 Exceedances during the Consent Decree. In any  
8 Reporting Year during which sampling at any one of the four Sample Points at Plants 1  
9 and 2 demonstrates four (4) or more exceedances of numeric limits in Table 1, Triumph  
10 shall prepare and submit a plan for reducing and/or eliminating the discharge relating to  
11 the relevant Sampling Point(s) of those pollutants exceeding their respective numeric  
12 limits ("Action Plan") to Waterkeeper by July 1 following the Reporting Year in which  
13 the exceedances giving rise to the obligation to submit an Action Plan occurred.  
14 Triumph also shall submit an Action Plan to the Waterkeeper by July 1, 2017, to  
15 evaluate and control the presence of chromium in stormwater discharges from Sample  
16 Point 1 at Plant 2 based on this evaluation.

17 24. Action Plan Requirements. Each Action Plan submitted shall be in writing  
18 and shall include, at a minimum: (1) the identification of the pollutant(s) exceeding  
19 Table 1's numeric limits, (2) an assessment of the source of each exceedance, (3) the  
20 identification of additional BMPs that will be implemented to achieve compliance with  
21 the respective numeric limits, and (4) time schedules for implementing proposed BMPs,  
22 which shall not exceed the following October 1 unless otherwise agreed by the Parties in  
23 writing. With respect to zinc, Triumph reserves the right to identify in an Action Plan  
24 and implement BMPs which Triumph believes comply with the 2015 Permit, including  
25 all applicable Effluent and Receiving Water limitations in Sections V and VI of the 2015  
26 Permit, instead of the zinc numeric limit, if BMPs cannot reasonably achieve compliance  
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1 with the zinc numeric limit. With respect to chromium, the Action Plan instead shall  
2 include (1) an assessment of the sources of detected chromium, (2) the identification of  
3 additional BMPs that will be implemented to control chromium levels in storm water  
4 discharges from the facilities, and (3) time schedules for implementing proposed BMPs,  
5 which shall not exceed the following October 1 unless otherwise agreed by the Parties in  
6 writing.

7       25. Action Plan Review. Waterkeeper shall have 30 days upon receipt of  
8 Defendant's Action Plan to provide Defendant with comments. Within 30 days from the  
9 date of receipt of Waterkeeper's written comments on Defendant's Action Plan,  
10 Defendant shall provide Waterkeeper with a written explanation as to the reasons  
11 Defendant is not incorporating any particular Waterkeeper comment into its Action Plan.  
12 Any disputes as to the adequacy of the Action Plan shall be resolved pursuant to the  
13 dispute resolution provisions set out in Section IV below.

14       26. If any structural BMPs require any government agency approval, then  
15 Defendant shall contact Waterkeeper to request an extension of the deadline, if  
16 necessary, to implement the structural BMPs requiring agency approval. Waterkeeper  
17 shall not unreasonably withhold consent to an extension request.

18       27. Defendant shall have until October 1 following the Reporting Year in which  
19 the obligation to submit an Action Plan occurred to implement the Action Plan.  
20 Defendant shall notify Waterkeeper in writing when the Action Plan has been  
21 implemented.

22       **D. Storm Water Pollution Prevention Plan**

23       28. SWPPP Revisions. Within thirty (30) calendar days of the Effective Date  
24 of this Consent Decree, Defendant shall revise the SWPPP to comply with Section X.A  
25 of the 2015 Permit and this Consent Decree. The Defendant shall submit the revised  
26 SWPPP to Waterkeeper for review and comment as soon as it is completed, but in any  
27 event no later than thirty (30) calendar days following the Effective Date. Waterkeeper  
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1 shall provide comments, if any, to Defendant within thirty (30) calendar days of receipt  
2 of the SWPPP. Defendant shall incorporate Plaintiff's comments into the SWPPP, or  
3 explain in writing why any comment is not incorporated, within thirty (30) calendar days  
4 of receiving comments. Any disputes as to the adequacy of the revised SWPPP shall be  
5 resolved pursuant to the dispute resolution provisions set out in Section IV of this  
6 Consent Decree.

7 **E. Employee Training**

8 29. Within thirty (30) calendar days of the Effective Date, Defendant shall  
9 review and revise its employee training program established in its SWPPP to comply  
10 with the requirements of this Consent Decree and the 2015 Permit, including any  
11 training materials, as necessary, for implementation of the training program ("Training  
12 Program").

13 30. The Training Program shall provide (a) that there be a sufficient number of  
14 employees delegated to achieve compliance with the Storm Water Permit and this  
15 Consent Decree, and (b) that these employees are properly trained to perform the  
16 required compliance activities under the 2015 Permit and this Consent Decree. Such  
17 Training Program shall be specified in the SWPPP.

18 31. The Training Program shall require specific training to include at least the  
19 following:

20 a. Non-Storm Water Discharge Training. The Defendant shall train all  
21 employees about the 2015 Permit's prohibition of non-storm water discharges so that  
22 employees know what non-storm water discharges are, how to detect them, and how to  
23 prevent them;

24 b. BMP Training. The Defendant shall train all employees responsible for  
25 BMP implementation and maintenance to ensure that BMPs are used effectively to  
26 prevent the exposure, discharge, and/or treatment of storm water at the Facilities.  
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1           c.     Sampling Training. The Defendant shall train all individuals collecting  
2 samples at the Facilities pursuant to this Consent Decree or the 2015 Permit on the  
3 proper sampling protocols, including chain of custody requirements, to ensure storm  
4 water and/or non-storm water samples are properly collected, stored, and submitted to a  
5 certified laboratory;

6           d.     Visual Observation Training. The Defendant shall provide training to all  
7 individuals performing visual observations at the Facilities pursuant to this Consent  
8 Decree and the 2015 Permit.

9           32.    Training shall be provided by a Qualified Industrial Storm Water  
10 Practitioner (“QISP”, as defined in Section IX.A of the 2015 Permit) familiar with the  
11 requirements of this Consent Decree and the 2015 Permit, and shall be repeated as  
12 necessary to ensure that all relevant employees are familiar with the requirements of this  
13 Consent Decree, the 2015 Permit, and the Facilities’ SWPPP. All relevant new staff  
14 shall receive this training before assuming responsibilities for implementing the SWPPP  
15 or the M&RP.

16           33.    The Defendant shall maintain training records to document compliance with  
17 this paragraph, and shall provide Waterkeeper with a copy of these records within  
18 fourteen (14) days of receipt of a written request.

19           34.    Annual Site Inspections. Waterkeeper may conduct one annual site  
20 inspection (“Site Inspection”) on terms substantially identical to those agreed to by the  
21 Settling Parties for the October 26, 2016 site visit, which would not include any  
22 sampling of stormwater. Site Inspections shall occur during normal business hours, and  
23 Waterkeeper will provide Defendant with as much notice as possible, but at least twenty-  
24 four (24) hours notice prior to a Site Inspection in anticipation of wet weather, and  
25 seventy-two (72) hours notice during dry weather. Notice will be provided by telephone  
26 and electronic mail. Waterkeeper agrees that all individuals participating in a Site  
27 Inspection will execute, as necessary, waivers, releases and similar agreements.  
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1       **F. Compliance Monitoring and Reporting**

2       35. Waterkeeper's Compliance Monitoring. Defendant shall pay a total of  
3 seven thousand, five hundred dollars (\$7,500) to compensate Waterkeeper for costs and  
4 fees to be incurred for monitoring Defendant's compliance with this Consent Decree.  
5 Payment shall be made within fifteen (15) days of the Effective Date payable to "Los  
6 Angeles Waterkeeper" addressed to: Los Angeles Waterkeeper, 120 Broadway, Suite  
7 105, Santa Monica, California 90401, and sent via courier or overnight delivery. Failure  
8 to submit payment as required under this paragraph will constitute a breach of the  
9 Consent Decree.

10       36. Action Plan Payments. Defendant shall pay three thousand, five hundred  
11 dollars (\$3,500) for each Action Plan for which the Waterkeeper submits comments  
12 under Paragraph 25 above. Payments shall be made payable to "Los Angeles  
13 Waterkeeper" and addressed to: Los Angeles Waterkeeper, 120 Broadway, Suite 105,  
14 Santa Monica, CA 90401, and sent via courier or overnight delivery. Failure to submit a  
15 payment as required under this paragraph will constitute a breach of the Consent Decree.

16       37. Data Reporting. During the life of this Consent Decree, Defendant shall  
17 provide Waterkeeper with a copy of all Consent Decree and 2015 Permit compliance  
18 and monitoring data, including any inspection reports which Triumph is required to  
19 maintain under the 2015 Permit, on a quarterly basis. The Defendant shall provide  
20 Waterkeeper with all stormwater sampling and analytical results taken at the Facilities  
21 within fifteen (15) days of the Defendant's receipt of all results for each sampling event.

22       38. Document Provision. During the life of this Consent Decree, Defendant  
23 shall copy Waterkeeper on all documents and communications related to stormwater  
24 discharges at the Facilities that are submitted to the Regional Board, the State Board,  
25 and/or any State, local, county, or municipal agency authorized to regulate stormwater.  
26 Such reports and documents shall be provided to Waterkeeper concurrently as they are  
27 sent to the agencies and/or municipalities. Any correspondence related to stormwater  
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1 discharges received from any such State, county, or municipal regulatory agency, shall  
2 be provided to Waterkeeper within five (5) business days of receipt by the Defendant.

3 **G. Environmental Project, Reimbursement of Litigation Fees and Costs,**  
4 **and Stipulated Penalties**

5 39. Environmental Project. The Defendant agrees to make a payment of thirty  
6 thousand dollars (\$30,000) within thirty (30) calendar days of the Effective Date to The  
7 Rose Foundation for a project related to water quality designed to analyze, reduce,  
8 prevent, or otherwise mitigate the ecological and/or public health effects of storm water  
9 and/or non-stormwater discharges into Los Angeles area waterbodies. The payment  
10 shall be mailed via certified mail or overnight delivery to Tim Little, Rose Foundation  
11 for Communities and the Environment, Attn: LA Waterkeeper v Triumph Processing  
12 Receiver, 1970 Broadway, Suite 600, Oakland, CA 94612-2218. Defendant shall  
13 provide Waterkeeper with a copy of such payment.

14 40. Reimbursement of Plaintiffs' Fees and Costs. The Defendant agrees to  
15 partially reimburse Plaintiff for its investigation fees and costs, consultant fees and costs,  
16 reasonable attorneys' fees, and other costs incurred as a result of investigating and filing  
17 the lawsuit, and negotiating a resolution of this matter in an amount totaling fifty  
18 thousand dollars (\$50,000). All such payments shall be made payable to Law Office of  
19 Gideon Kracov and delivered by certified mail or overnight delivery at 801 S. Grand  
20 Av., 11<sup>th</sup> Floor, Los Angeles, CA 90017.

21 41. Stipulated Payment. The Defendant shall make a remediation payment of  
22 six hundred dollars (\$600) for each missed deadline included in this Consent Decree.  
23 Payments for a missed deadline shall be made for the restoration and/or improvement of  
24 the watershed in the area affected by the Defendant's alleged discharges and shall be  
25 awarded to The Rose Foundation, and mailed via certified mail or overnight delivery per  
26 the terms described above in Paragraph 39. The Defendant agrees to make the stipulated  
27 payment within thirty (30) days of a missed deadline, unless the Waterkeeper agreed in  
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1 writing to an extension of that deadline, and make the payment via overnight delivery or  
2 by certified mail. The Defendant shall provide Waterkeeper with a copy of each such  
3 payment at the time it is made.

4 **H. Agency Review of Consent Decree**

5 42. Plaintiff shall submit this Consent Decree to the United States Department  
6 of Justice and the United States Environmental Protection Agency (the Federal  
7 Agencies), within three (3) business days of the final signature of the Parties, for agency  
8 review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five  
9 (45) calendar days after receipt by both agencies, as evidenced by written  
10 acknowledgement of receipt by the agencies or the certified return receipts, copies of  
11 which shall be provided to Defendant. In the event that the Federal Agencies object to  
12 entry of this Consent Decree, the Parties agree to meet and confer to attempt to resolve  
13 the issue(s) raised by the Federal Agencies.

14 **IV. DISPUTE RESOLUTION**

15 43. This Court shall retain jurisdiction over this matter for the purposes of  
16 adjudicating all disputes among the Parties that may arise under the provisions of this  
17 Consent Decree. The Court shall have the power to enforce this Consent Decree with all  
18 available legal and equitable remedies, including contempt.

19 44. Meet and Confer. Either party to this Consent Decree may invoke the  
20 dispute resolution procedures of this Section by notifying the other party in writing of  
21 the matter(s) in dispute and of the disputing party's proposal for resolution under this  
22 Section. The Parties shall then meet and confer in an attempt to resolve the dispute no  
23 later than thirty (30) calendar days from the date of the notice.

24 45. If the Parties cannot resolve the dispute within 30 days after the meet and  
25 confer described in paragraph 44, the Parties agree to request a settlement meeting  
26 before the Judge assigned to this action. In the event that the Parties cannot resolve the  
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1 dispute by the conclusion of the settlement meeting with the Judge, the Parties agree to  
2 submit the dispute via motion to the District Court.

3 46. In resolving any dispute arising from this Consent Decree, the Court shall  
4 have discretion to award attorneys' fees and costs to either party. The relevant portions  
5 of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil  
6 Procedure and applicable case law interpreting such provisions shall govern the  
7 allocation of fees and costs in connection with the resolution of any disputes before the  
8 District Court. Plaintiff and Defendant agree to file any waivers necessary for the Judge  
9 to preside over any settlement conference and motion practice.

10 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

11 47. In consideration of the above, upon the Effective Date of this Consent  
12 Decree, the Parties hereby fully release, except for claims for Defendant's failure to  
13 comply with this Consent Decree and as expressly provided below, each other and their  
14 respective successors, assigns, officers, agents, employees, and all persons, firms and  
15 corporations having an interest in them, from any and all alleged CWA violations  
16 claimed in the Complaint, up to and including the Termination Date of this Consent  
17 Decree.

18 48. Nothing in this Consent Decree limits or otherwise affects Plaintiff's or  
19 Defendant's respective rights to address or take any position that it deems necessary or  
20 appropriate in any formal or informal proceeding before the Regional Board, EPA, or  
21 any other judicial or administrative body on any other matter or claim not addressed in  
22 this Consent Decree and relating to the Defendant.

23 49. Neither the Consent Decree nor any payment pursuant to the Consent  
24 Decree shall constitute or be construed as a finding, adjudication, or acknowledgement  
25 of any fact, law or liability, nor shall it be construed as an admission of violation of any  
26 law, rule, or regulation. The Defendant maintains and reserves all defenses they may  
27 have to any alleged violations that may be raised in the future.  
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1        50. Force Majeure. The Defendant shall notify Waterkeeper pursuant to the  
2 terms of this paragraph, when timely implementation of the requirements set forth in this  
3 Consent Decree becomes impossible, despite the timely good-faith efforts of the  
4 Defendant, due to circumstances beyond the reasonable control of the Defendant or its  
5 agents, and which could not have been reasonably foreseen and prevented by the  
6 exercise of due diligence by the Defendant. Any delays due to Defendant's failure to  
7 make timely and bona fide applications and to exercise diligent efforts to obtain  
8 necessary permits, or due to normal inclement weather, shall not, in any event, be  
9 considered to be circumstances beyond Defendant's control. In no circumstances shall a  
10 claim of inability to pay be considered Force Majeure.

11            a. If the Defendant claims impossibility, it shall notify Waterkeeper in writing  
12 within twenty-one (21) calendar days of the date that the Defendant first knew of the  
13 event or circumstance that caused or would cause a violation of this Consent Decree.  
14 The notice shall describe the reason for the nonperformance and specifically refer to this  
15 Section. It shall describe: i) the anticipated length of time the delay may persist; ii) the  
16 cause or causes of the delay; iii) the measures taken or to be taken by the Defendant to  
17 prevent or minimize the delay; iv) the schedule by which the measures will be  
18 implemented; and v) the anticipated date of compliance. The Defendant shall adopt all  
19 reasonable measures to avoid and minimize such delays.

20            b. The Parties shall meet and confer in good-faith concerning the non-  
21 performance and, where the Parties concur that performance was or is impossible,  
22 despite the timely good faith efforts of the Defendant, due to circumstances beyond the  
23 control of Defendant that could not have been reasonably foreseen and prevented by the  
24 exercise of due diligence by the Defendant, the Parties shall agree upon new deadlines.

25            c. If Waterkeeper disagrees with the Defendant's notice, or in the event that  
26 the Parties cannot timely agree on the terms of new performance deadlines or  
27 requirements, either party shall have the right to invoke the Dispute Resolution  
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1 Procedure pursuant to Section IV. In such proceeding, the Defendant shall bear the  
2 burden of proving that any delay in performance of any requirement of this Consent  
3 Decree was caused or will be caused by force majeure and the extent of any delay  
4 attributable to such circumstances.

5 **VI. MISCELLANEOUS PROVISIONS**

6 51. Construction. The language in all parts of this Consent Decree shall be  
7 construed according to its plain and ordinary meaning, except as to those terms defined  
8 in the 2015 Permit, the Clean Water Act, or specifically herein.

9 52. Choice of Law. The laws of the United States shall govern this Consent  
10 Decree.

11 53. Severability. In the event that any provision, paragraph, section, or  
12 sentence of this Consent Decree is held by a court to be unenforceable, the validity of  
13 the enforceable provisions shall not be adversely affected.

14 54. Correspondence. All notices required herein or any other correspondence  
15 pertaining to this Consent Decree shall be sent by regular mail or electronic mail as  
16 follows:

17  
18 If to Plaintiff:

19 Arthur Pugsley  
20 Melissa Kelly  
21 Staff Attorney  
22 Los Angeles Waterkeeper  
23 120 Broadway, Suite 105  
24 Santa Monica, CA 90401  
25 arthur@lawaterkeeper.org  
26 melissa@lawaterkeeper.org  
27  
28

1 With copies to:

2 Bruce Reznik  
3 Executive Director  
4 Los Angeles Waterkeeper  
5 bruce@lawaterkeeper.org

6 If to Defendant:

7 Glenn Unterberger (Penn. Bar No. 58667)  
8 BALLARD SPAHR LLP  
9 1735 Market Street, 51st Floor  
10 Philadelphia, PA 19103-7599  
11 unterberge@ballardspahr.com

12 With copies to:

13 Ashok Advani, General Manager  
14 Triumph Processing Inc.  
15 2605 Industry Way  
16 Lynwood, California 90262  
17 [aadvani@triumphgroup.com](mailto:aadvani@triumphgroup.com)

18 Notifications of communications shall be deemed submitted three (3) days after the date  
19 that they are postmarked and sent by first-class mail, or immediately after  
20 acknowledgement of receipt via email by the receiving party. Any change of address or  
21 addresses shall be communicated in the manner described above for giving notices.

22 55. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent  
23 Decree, warrant or aver in any manner that the Defendant's compliance with this  
24 Consent Decree will constitute or result in compliance with any federal or state law or  
25 regulation. Nothing in this Consent Decree shall be construed to affect or limit in any  
26 way the obligation of the Defendant to comply with all federal, state, and local laws and  
27 regulations governing any activity required by this Consent Decree.  
28

1           56. Counterparts. This Consent Decree may be executed in any number of  
2 counterparts, all of which together shall constitute one original document. Telecopy  
3 and/or facsimile copies of original signature shall be deemed to be originally executed  
4 counterparts of this Consent Decree.

5           57. Modification of the Consent Decree. This Consent Decree, and any  
6 provisions herein, may not be changed, waived, discharged, or terminated unless by a  
7 written instrument, signed by the Parties.

8           58. Full Settlement. This Consent Decree constitutes a full and final settlement  
9 of this matter.

10          59. Integration Clause. This is an integrated Consent Decree. This Consent  
11 Decree is intended to be a full and complete statement of the terms of the agreement  
12 between the parties and expressly supersedes any and all prior oral or written  
13 agreements, covenants, representations, and warranties (express or implied) concerning  
14 the subject matter of this Consent Decree.

15          60. Authority. The undersigned representatives for Plaintiff and Defendant  
16 each certify that s/he is fully authorized by the party whom s/he represents to enter into  
17 the terms and conditions of this Consent Decree.

18          61. The provisions of this Consent Decree apply to and bind the Parties,  
19 including any successors or assigns. The Parties certify that their undersigned  
20 representatives are fully authorized to enter into this Consent Decree, to execute it on  
21 behalf of the Parties, and to legally bind the Parties to its terms.

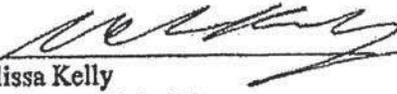
22          62. The Parties agree to be bound by this Consent Decree and not to contest its  
23 validity in any subsequent proceeding to implement or enforce its terms. By entering  
24 into this Consent Decree, the Defendant does not admit liability for any purpose as to  
25 any allegation or matter arising out of this Action.

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1 IN WITNESS WHEREOF, the undersigned have executed this [Proposed]  
2 Consent Decree as of the date set forth below.

3  
4 LOS ANGELES WATERKEEPER

5 Dated: 24 <sup>March</sup> ~~February~~ 2017 *MK*

6 by:   
Melissa Kelly  
7 Attorney for Plaintiff  
8 LA Waterkeeper

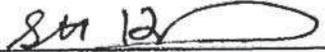
9 LOS ANGELES WATERKEEPER

10 Dated: 24 <sup>March</sup> ~~February~~ 2017 *BR*

11 by:   
12 Bruce Reznik  
13 Executive Director  
14 LA Waterkeeper

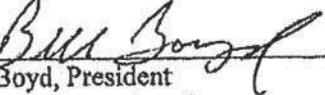
15 BALLARD SPAHR LLP

16 Dated: 24 <sup>March</sup> ~~February~~ 2017

17 by:   
18 Scott S. Humpheys  
19 Attorneys for Defendant  
20 Triumph Processing, Inc.

21 TRIUMPH PROCESSING, INC.

22 Dated: 17 <sup>March</sup> ~~February~~ 2017

23 by:   
24 Bill Boyd, President  
25 Triumph Processing, Inc.

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**IT IS SO ORDERED:**

Date: 5/16/17

**PHILIP S. GUTIERREZ**

Honorable Philip S. Gutierrez  
DISTRICT COURT JUDGE  
CENTRAL DISTRICT OF CALIFORNIA