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5 *Attorneys for Plaintiff*

6 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

7
8 **UNITED STATES DISTRICT COURT**

9 **EASTERN DISTRICT OF CALIFORNIA**

10
11 CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a California non-
12 profit corporation,

13 Plaintiff,

14 vs.

15 SECURITY CONTRACTOR SERVICES,
INC., a California corporation,

16 Defendant.
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Civil Case No. 2:15-cv-00760-MCE-AC

**CONSENT DECREE MODIFICATION;
ORDER**

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

1 **CONSENT DECREE**

2 The following Consent Decree Modification is entered into by and between Plaintiff California
3 Sportfishing Protection Alliance (“Plaintiff” or “CSPA”), and Defendant Security Contractor Services,
4 Inc. (“Defendant” or “SCS”). The entities entering into this Consent Decree Modification are
5 collectively the “Settling Parties.”

6 **WHEREAS**, CSPA is a 501(c)(3) non-profit public benefit conservation and research
7 organization established in 1983 for the purpose of conserving, restoring, and enhancing the state’s
8 water quality, wildlife, fishery resources, aquatic ecosystems, and associated riparian habitats;

9 **WHEREAS**, Defendant is the owner and/or operator of the metal and fabricated wire
10 manufacturing facility located at 5339 and 5311 Jackson Street, in North Highlands, California 95660
11 (“SCS Facility” or “Facility”);

12 **WHEREAS**, on May 16, 2016, the Court entered the Settling Parties’ Consent Decree
13 setting forth terms and conditions appropriate to resolving the allegations set forth in the Complaint
14 without further proceedings and without any admission of liability on the part of the Defendant (Dkt.
15 No. 30);

16 **WHEREAS**, the Settling Parties have been engaged in informal meet and confer proceedings
17 pursuant to Consent Decree paragraph 39 in an effort to resolve certain disputes related to best
18 management practices (“BMPs”) at the Facility, storm water discharge locations and sampling, and
19 stipulated payments;

20 **WHEREAS**, the Central Valley Regional Water Quality Control Board (“Regional Board”)
21 allowed SCS to partially terminate General Permit for Storm Water Discharges Associated with
22 Industrial Activities, National Pollutant Discharge Elimination System Permit No. CAS000001, Order
23 2014-0057-DWQ (“Permit”) coverage based on the Regional Board’s agreement with SCS’s position
24 that operations in Drainage Area B are not industrial;

25 **WHEREAS**, on November 1, 2017, CSPA filed a Petition for Review of the Regional Board’s
26 Action of Approving A Change of Information Allowing Partial Termination of Permit Coverage
27 (“Petition”) with the California State Water Resources Control Board, seeking to overturn the Regional
28 Board’s approval of SCS’s partial termination of Permit coverage;

1 **WHEREAS**, the California State Water Resources Control Board denied CSPA’s Petition by
2 operation of law by taking no action on CSPA’s Petition within the 90-day review period;

3 **WHEREAS**, on February 28, 2018, CSPA filed a Verified Petition for Writ of Mandate in the
4 Superior Court for San Francisco County, Case No. CPF-18-516070, seeking court review of changes
5 made to Permit coverage at the Facility (“Writ Petition”);

6 **WHEREAS**, paragraph 54 of the Consent Decree provides that any provisions of the Consent
7 Decree may be changed, waived, discharged, or terminated by written instrument signed by the Settling
8 Parties only;

9 **WHEREAS**, the Settling Parties agree that certain changes to paragraphs 13, 15.1, 16, 17, 18.2,
10 21, and 32 of the Consent Decree are warranted;

11 **WHEREAS**, the Settling Parties agree this Consent Decree Modification is entered into to
12 resolve their current disputes related to BMPs at the Facility, storm water discharge locations and
13 sampling, and stipulated payments and ends the current informal dispute resolution negotiations;

14 **WHEREAS**, all actions taken by Defendant pursuant to this Consent Decree Modification shall
15 be made in compliance with all applicable Federal and State laws and local rules and regulations.

16 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
17 **PARTIES AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

18 **I. EFFECTIVE DATE AND EFFECT OF MODIFICATION.**

19 1. The term “Effective Date” as used in this Consent Decree Modification shall mean the
20 date that all Settling Parties have signed.

21 2. This Consent Decree Modification is incorporated into the Consent Decree and any
22 Consent Decree terms not listed in paragraphs 5 through 9, below, remain in full force and effect as set
23 forth therein.

24 **II. COMMITMENTS OF THE SETTLING PARTIES.**

25 3. Dismissal of Writ Petition. Within seventy-five (75) days of receipt of a revised Storm
26 Water Pollution Prevention Plan (“SWPPP”) that meets the requirements of paragraph 5, below, CSPA
27 shall voluntarily dismiss its Writ Petition with prejudice.

28 4. Deferral and Possible Waiver of Disputed Stipulated Payments. CSPA shall defer seeking

1 payment of \$13,000.00 in stipulated payments CSPA alleges are currently due pursuant to Consent
2 Decree paragraph 36 until the end of the Consent Decree term, which is defined at Consent Decree
3 paragraph 8. In the event Defendant achieves full compliance with Consent Decree paragraph 32 as
4 modified herein, CSPA shall waive the currently disputed stipulated payments at the end of the Consent
5 Decree term. CSPA shall confirm such waiver in writing, if applicable, on the Consent Decree
6 termination date, i.e., May 6, 2021. Disputes about Defendant's compliance with Consent Decree
7 paragraph 32 as modified herein shall be resolved pursuant to Section III of the Consent Decree and
8 shall be raised at least ten (10) days before the Consent Decree termination date. By entering into this
9 paragraph the Settling Parties do not waive any objections, positions, or arguments as to when stipulated
10 payments are due under Consent Decree paragraph 36, and expressly preserve all rights to raise any such
11 objections, positions, or arguments in the event further informal and/or formal dispute resolution is
12 necessary. Defendant also reserves any rights, objections, positions, and/or arguments as to the basis,
13 existence, and validity of the \$13,000.00 in stipulated payments that CSPA alleges are currently due,
14 herein.

15 5. Modification to Consent Decree Paragraph 13. In addition to the BMPs described in
16 Consent Decree paragraph 13, within forty-five (45) days of the Effective Date, Defendant shall
17 implement the following BMPs in the rental portion of the area of the Facility that discharges to SP-1
18 ("Drainage Area B"):

- 19 5.1. Defendant shall (a) install a 10,000-gallon storage tank within Drainage Area B,
20 (b) construct a small sump if necessary, and (c) use a mobile pump to convey the
21 volume of storm water generated from the 85th percentile 24-hour storm event
22 from Drainage Area B to the 10,000 gallon storage tank and then to portion(s) of
23 the Facility where runoff is treated.

24 Defendant shall modify its SWPPP to incorporate these BMPs into Section 7.2 ("NEC Checklist") of the
25 SWPPP dated September 2017, and provide the revised SWPPP to CSPA pursuant to Consent Decree
26 paragraph 29.

27 6. Modification to Consent Decree Paragraph 15.1. Subparagraphs 15.1-15.4 of the
28 Consent Decree identify the storm water sample locations at the Facility from which the Consent

1 Decree requires that Defendant collect storm water samples (“Sample Location(s)”). After installation
2 of the BMP listed in paragraph 5, above, Defendant may eliminate SP-1 as a Sample Location for
3 purposes of the Consent Decree and this Consent Decree Modification.

4 7. Modification to Consent Decree Paragraph 21. Defendant shall continue to comply with
5 the visual observation requirements of Consent Decree paragraph 21 at to SP-1.

6 8. Modification to Consent Decree Paragraph 32. Consent Decree paragraph 32 is modified
7 to include the following clarifications:

8 8.1. Communications (e.g., emails, letters, faxes, Stormwater Multiple Application
9 and Report Tracking System (“SMARTs”) submissions) related to water quality
10 at the Facility include, but are not limited to, communications related to the
11 Facility storm water program, BMPs, sampling, and Permit coverage.

12 Communications related to water quality at the Facility do not include
13 communications about the technical logistics of, or troubleshooting the use of,
14 the SMARTs platform.

15 8.2. CSPA will be copied (cc’d or bcc’d) on all emails related to water quality at the
16 Facility from SCS, GSI, Keramida, and/or any other consultant retained by
17 Defendant to assist in compliance with the terms of the Consent Decree and/or
18 this Consent Decree Modification (“New Consultants”) (GSI, Keramida, and
19 New Consultants are hereby referred to collectively as “Consultants”) to the
20 Regional Board, the State Board, and/or any State or local agency or
21 municipality at the time they are sent to the relevant government entity at the
22 email addresses listed for CSPA in Consent Decree paragraph 51.

23 8.3. Copies of any letters related to water quality at the SCS facility from SCS and/or
24 any of its Consultants to the Regional Board, the State Board, and/or any State or
25 local agency or municipality will either be post marked and mailed to CSPA on
26 the same day that they are sent to the relevant government entity or sent via
27 email on the same day they are sent.

28 8.4. Faxes related to water quality at the SCS facility from SCS and/or any of its

1 Consultants to the Regional Board, the State Board, and/or any State or local
2 agency or municipality will be emailed to CSPA the same day they are sent. The
3 sending party will include a scan of the fax transmittal sheet with the email to
4 confirm when the fax was sent.

5 8.5. A date stamped screen shot will be taken of a SMARTs filing after the form is
6 complete but prior to completing the submission and will be emailed to CSPA
7 before close of business on the day the submission is made.

8 9. Modification to Consent Decree Paragraph 18.2. Pursuant to Consent Decree paragraph
9 18.2, the Settling Parties agree that Defendant shall install its planned advanced treatment control
10 measures no later than July 1, 2018 given that due to Force Majeure the time needed to design, procure,
11 and install the necessary equipment it was not possible for Defendant to completely install those
12 measures by October 1, 2017.

13 10. Authority. The undersigned representatives for Plaintiff and Defendant each certify that
14 he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of
15 this Consent Decree Modification.

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

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

24 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree Modification as of
25 the last date set forth below.

1 APPROVED AS TO FORM

2 LAW OFFICES OF LAYNE K. FRIEDRICH

3
4 Dated: _____, 2018

By: _____
Layne Friedrich
Attorneys for Plaintiff

6 CASTELLÓN & FUNDERBURK LLP

7
8 Dated: _____ 2018

By: _____
William Funderburk
Attorneys for Defendant

10 APPROVED AS TO CONTENT

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12 Dated: _____ 2018

By: _____
Bill Jennings
California Sportfishing Protection Alliance

14
15
16 Dated: _____ 2018

By: _____
Mr. Barry Marrs
Security Contractor Services

18 IT IS SO ORDERED.

19 Dated: June 19, 2018

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MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE