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9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

12 BAYKEEPER, INC., d/b/a SAN
 FRANCISCO BAYKEEPER, a
 13 California non-profit corporation,
 14 Plaintiff,
 15 v.
 16 CITY OF SOUTH SAN FRANCISCO,
 a California municipal corporation,
 17 Defendant.
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Case No. 10-00921 SBA
**NOTICE OF MOTION AND JOINT
 MOTION FOR TERMINATION OF
 CONSENT DECREE**
 Date: June 4, 2013
 Time: 1:00 p.m.
 Courtroom: 1

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1 **NOTICE OF MOTION**

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3 PLEASE TAKE NOTICE that, pursuant to Federal Rules of Civil Procedure,
4 Rule 60 and the terms of this Court's Consent Decree entered on May 16, 2011, on
5 June 4, 2013, at 1:00 p.m., or as soon as thereafter as the matter may be heard in the
6 above-entitled Court, located at 1301 Clay Street, 4th Floor, Courtroom 1, Oakland,
7 California 94612, the Honorable Sandra Brown Armstrong presiding, Plaintiff
8 Baykeeper, Inc., d/b/a San Francisco Baykeeper and Defendant City of South San
9 Francisco will move, and hereby do move, the Court to terminate the Consent
10 Decree in this matter and dismiss the case.

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12 DATED: April 5, 2013

MEYERS, NAVE, RIBACK, SILVER &
WILSON

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15 By: /s/Gregory J. Newmark
16 Gregory J. Newmark
17 Attorneys for Defendant
18 City of South San Francisco
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20 DATED: April 5, 2013

SAN FRANCISCO BAYKEEPER

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23 By: /s/Jason Flanders
24 Jason Flanders, Staff Attorney
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1 **I. INTRODUCTION AND BACKGROUND**

2 Plaintiff Baykeeper, Inc., d/b/a San Francisco Baykeeper (“Baykeeper”) and
3 Defendant City of South San Francisco (“City”) bring this Joint Motion For
4 Termination Of Consent Decree pursuant to Federal Rules of Civil Procedure, Rule
5 60 and the terms of this Court’s Consent Decree entered on May 16, 2012,
6 requesting that this Court enter an order terminating the Consent Decree, a copy of
7 which is attached hereto as Exhibit “A,” and dismissing the case.

8 On March 4, 2010, Baykeeper filed the complaint herein against the City,
9 alleging violations of the federal Clean Water Act by the City in connection with its
10 operation of the City’s sewage collection system. The Consent Decree is the result
11 of a settlement reached between the parties. Section VI of the Consent Decree
12 authorizes the parties to move the Court to terminate the Consent Decree if the City
13 has no more than 4 Sanitary Sewer Overflows (SSOs) per 100 miles of sewer from
14 the City Collection System in one calendar year, followed by no more than 3 spills
15 per 100 miles of sewer the following year. The City has met these criteria and
16 therefore this Motion should be granted, the Consent Decree terminated, and the
17 case dismissed.

18 **II. ARGUMENT**

19 On May 16, 2010, this Court entered the Consent Decree. The Consent
20 Decree has a 5-year term, but under Section VI, Paragraph 18, the Consent Decree
21 may terminate early if “the City has no more than four SSOs per 100 miles of sewer
22 from the City Collection System in a given calendar year followed by no more than
23 three SSOs per 100 miles of sewer in the succeeding calendar year.” See Ex. “A”
24 [Consent Decree] at ¶ 18. The Consent Decree provides that if the aforementioned
25 spill goals are met, then the City “shall initiate early termination by submitting a
26 letter to Baykeeper demonstrating that it has satisfied the conditions of early
27 termination set forth” in Paragraph 18. Ex. “A” [Consent Decree] at ¶ 18. The City
28 submitted a letter to Baykeeper on February 21, 2013, notifying Baykeeper that it

1 had met the SSO requirements for early termination under Paragraph 18 of the
2 Consent Decree and submitting documentation demonstrating same. See Ex. “B”
3 [City’s February 21, 2013 Early Termination Letter]. As the City’s letter shows, the
4 City had 3 spills per 100 miles of pipe in Calendar Year 2011, followed by 3 spills
5 per 100 miles of pipe in Calendar Year 2012 (*id.*), and, thus, the City met the
6 Consent Decree’s requirements for early termination.

7 Baykeeper reviewed the City’s request and the parties hereby stipulate that
8 the City has indeed achieved the spill goals allowing for early termination of the
9 Consent Decree. See Ex. “C” [Baykeeper’s February 26, 2013 Response to City].
10 The parties further stipulate that the judgment “has been satisfied, released, or
11 discharged” and termination of the Consent Decree and dismissal of this case is
12 proper. Fed. R. Civ. Proc., Rule 60(b); *SEC v. Randolph*, 736 F.2d 525, 528 (9th
13 Cir. 1984).

14 Furthermore, this Court retained jurisdiction to enforce the terms and
15 conditions of the Consent Decree. Consent Decree, ¶ 83. A proposed order, filed
16 concurrently herewith, would dismiss this case, terminate the Court’s jurisdiction
17 under the Consent Decree, and discharge the City of any and all present and future
18 obligations arising thereunder.

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1 **III. CONCLUSION**

2 For the reasons set forth above, the parties jointly move this Court to enter the
3 proposed order to terminate the Consent Decree and dismiss this case.

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5 DATED: April 5, 2013

MEYERS, NAVE, RIBACK, SILVER &
WILSON

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By: /s/Gregory J. Newmark

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Gregory J. Newmark

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Attorneys for Defendant

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City of South San Francisco

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DATED: April 5, 2013

SAN FRANCISCO BAYKEEPER

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By: /s/Jason Flanders

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Jason Flanders

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Attorney for Plaintiff

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San Francisco Baykeeper

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ORDER


On April 5, 2013, Plaintiff Baykeeper, Inc. and Defendant City of South San Francisco jointly moved this Court for termination of the Consent Decree in *Baykeeper, Inc. v. City of South San Francisco*, Civ. No. 10-00921 SBA. The Court, having considered the papers, and good cause appearing, rules as follows:

Plaintiff's and Defendant's Joint Motion For Termination Of Consent Decree is hereby GRANTED and this case is DISMISSED. The Consent Decree in this matter, and the Court's continuing jurisdiction, are hereby TERMINATED.

The parties shall bear their own attorneys' fees and costs associated with this Motion.

IT IS SO ORDERED.

DATED: _4/16/13


UNITED STATES DISTRICT COURT JUDGE
SAUNDRA BROWN ARMSTRONG