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5 Attorneys for Plaintiff
 6 RYAN PEARSON
 dba PEASON EXPLORATION

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA

9
 10 RYAN PEARSON, an Individual,
 dba PEARSON EXPLORATION

CASE NO. C11 – 05037 LHK/HRL

~~PROPOSED~~

11 Plaintiff,

12 CONSENT DECREE AND
 INJUNCTION

13 vs.

14 STEVE PEARSON, an Individual
 dba PEARSON TRUCKING, and
 DOES 1-10, inclusive,

15 Defendants.

16 _____ /
 17
 18 WHEREAS, the plaintiff RYAN PEARSON, an individual dba PEARSON
 19 EXPLORATION, commenced this action by filing the complaint herein; the Defendant
 20 STEVE PEARSON, an individual dba PEARSON TRUCKING, filed an Answer denying
 21 the claims in the complaint and asserting affirmative defenses; the parties have been
 22 represented by the attorneys whose names appear hereafter; and the parties have agreed
 23 to settlement of this action upon the following terms and conditions, without adjudication
 24 of any issue of fact or law and without the defendant admitting liability for any of the
 25 matters alleged in the complaint or that the facts as alleged in the complaint, other than
 26 the jurisdictional facts, are true;

27 THEREFORE, on the joint motion of the plaintiff and the defendant, it is hereby
 28 ORDERED, ADJUDGED, and DECREED as follows:

1 1. OBLIGATIONS. Defendant will not use or display the name "PEARSON" in
2 connection with advertising, marketing or merchandising of exploration, excavation or
3 construction services anywhere within the states of California, Oregon or any state
4 bordering California or Oregon for so long as Plaintiff's trademark is legally valid, in
5 force, and/or not waived. Defendant shall immediately destroy any existing advertising
6 or marketing materials bearing the name PEARSON that are in his possession or under
7 his control, and shall have the period of six months from the date of entry of this Consent
8 Decree to effectuate changes to advertising and marketing materials already in usage and
9 circulation, that are in his possession or under his control. Defendant shall also remove
10 the PEARSON name from all vehicles or equipment that are in his possession or under
11 his control. Notwithstanding the foregoing, it is expressly agreed and understood that
12 Defendant will continue to maintain his contractor's license with the California
13 Contractors State License Board using his name, Steve Pearson, and that such use will
14 not constitute a violation of this Consent Decree or infringement of Plaintiff's mark. It is
15 also expressly understood that Defendant will continue to use the name "Steve Pearson
16 Trucking" in connection with bulk water delivery business (excluding truck signage), and
17 that said use, and the associated registration as "Steve Pearson Trucking" for bulk water
18 delivery with CAL FIRE and the U.S. General Services Administration (GSA), will not
19 constitute a violation of this Consent Decree or infringement of Plaintiff's mark. The
20 Parties further agree that each shall bear its own attorneys' fees and costs arising out of or
21 in connection with this Action.

22 2. DISMISSAL. Within ten (10) days of execution of this Agreement the Parties
23 will execute, and Plaintiff will file, a Stipulation of Dismissal with Prejudice of the
24 Complaint in its entirety.

25 3. RELEASES.

26 (a) The Parties, individually, and on behalf of their respective assigns, employees,
27 agents and other representatives, hereby fully release and forever discharge each other
28

1 and their respective assigns, employees, agents and other representatives from any and all
2 past and present, known and unknown actions, claims, demands, causes of action, suits,
3 counts, obligations, damages, losses, costs, expenses, attorneys' fees, judgments and
4 liabilities of any nature or kind whatsoever, asserted or unasserted, known or unknown,
5 contingent or non-contingent, suspected or unsuspected, whether based upon tort,
6 contract, statutory or other civil penalties, or any other form of damages, attorneys' fees,
7 costs, losses or expenses of any kind or nature, or injunctive, declaratory or other forms
8 of equitable relief which each has or may have against the other in whole or part arising
9 from or in connection with the Action or the events or damages alleged in it, or which are
10 or could have been alleged or presented in the Action.

11 (b) WAIVERS OF CIVIL CODE § 1542. Each Party understands and agrees that
12 this Agreement constitutes a full, final and complete settlement and compromise of each,
13 every and all claims and potential claims of any nature and kind, known or unknown,
14 suspected or unsuspected, anticipated or unanticipated, arising out of or in connection
15 with the Action. The Parties expressly warrant that they are familiar with and understand
16 the provisions and significance of California Civil Code Section 1542, which provides as
17 follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO
19 CLAIMS WHICH THE CREDITOR DOES NOT KNOW
20 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
21 THE TIME OF EXECUTING THE RELEASE, WHICH
22 IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
23 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

24 Having had the advice of counsel, the Parties expressly, knowingly and voluntarily waive
25 and relinquish all rights and benefits they have or may have under the provisions of
26 California Civil Code Section 1542, or the law of any other state or jurisdiction to the
27 same or similar effect as California Civil Code Section 1542. In waiving the application
28 of California Civil Code Section 1542, the Parties acknowledge that a risk exists that a

1 Settling Party incurred or suffered or may incur or suffer loss, damages or injuries as a
2 result of the matters, events, occurrences, transactions, causes and things referred to in
3 this Agreement which were unknown, unsuspected or unanticipated at the time that this
4 Agreement was executed. The Parties each assume this risk.

5 4. NO ADMISSION OF LIABILITY. It is understood that in making this
6 Agreement, the Parties do not admit the sufficiency of any claims, allegations, assertions,
7 contentions, or positions of any party, or the sufficiency of any defense to any such
8 claims, allegations, assertions, contentions or positions. The Parties to this Agreement
9 agree that the covenant and release comprising this Agreement are not intended to be
10 admissions of liability of any kind on the part of either Party under any theory or in any
11 amount. The Parties deny any wrongdoing whatsoever, and enter this Agreement in good
12 faith to fully and forever resolve this Action and avoid the cost and expense of further
13 proceedings.

14 5. ARM'S LENGTH NEGOTIATIONS. This Agreement has been negotiated at
15 arm's length between the Parties. Any rule of law (including California Civil Code
16 Section 1654) or legal decision that would require interpretation of any ambiguities in
17 this Agreement against the party that drafted the applicable provision is not applicable
18 and is hereby waived. The provisions of this Agreement shall be interpreted in a
19 reasonable manner to effect the purposes of the Parties hereto and this Agreement.

20 6. NO INDUCEMENT. The Parties expressly warrant and represent that, in
21 executing this Agreement, no other party, or any agent or attorney of any party, has made
22 any promise, representation or warranty whatsoever, express or implied, not contained in
23 this Agreement to induce any party to sign this Agreement. Each party further
24 acknowledges that it has not executed this Agreement in reliance on any such promise,
25 representation or warranty.

26 7. INFORMED CONSENT. The Parties expressly represent that each has
27 consulted with, or had an opportunity to consult with their respective attorneys of record
28 (or counsel of choice) concerning all portions of this Agreement and the releases set forth

1 above, and have been fully advised by their own attorneys with respect to their rights and
2 obligations hereunder.

3 8. BINDING AGREEMENT. This Agreement shall be binding upon and inure to
4 the benefit of the Parties and their representatives, predecessors, successors, assigns,
5 executors, administrators, subsidiaries, affiliated companies, agents, partners, insurers
6 and attorneys.

7 9. ENTIRE AGREEMENT. This Agreement constitutes the full and entire
8 agreement between the Parties with respect to its subject matter, except as otherwise
9 referenced herein, and fully supersedes any and all prior understandings, representations,
10 warranties and agreements between the Parties pertaining to the subject matter of this
11 Agreement.

12 10. MODIFICATIONS. This Agreement may not be amended or modified, except
13 by a written agreement executed by both parties to this Agreement.

14 11. AUTHORITY TO ENTER AGREEMENT. Each individual and/or party
15 executing this Agreement represents and warrants that each is duly authorized to enter
16 into and execute this Agreement. The Parties warrant that they are true holders of all
17 rights and remedies which they purport to release, and that they have not assigned or
18 transferred through subrogation or otherwise, any of these rights or remedies to any other
19 individuals or entities, and no further approvals are required to be obtained from any
20 persons or entities.

21 12. GOVERNING LAW. This Agreement shall be governed by and construed in
22 accordance with the laws of the State of California. The Parties agree that if any
23 provision of this Agreement is not enforceable under California law, the remainder of this
24 Agreement shall nonetheless remain binding and in effect.

25 13. PARAGRAPH HEADINGS. The various headings in this Agreement are
26 inserted for convenience only and shall not affect this Agreement or any of its provisions.

27 14. EFFECTIVE DATE. The Parties deem this Agreement to be effective as of the
28 date that the Agreement is fully executed by both Parties

1 15. ATTORNEY'S FEES. In any action or proceeding among the Parties arising
2 from or in connection with this Agreement, or for breach, enforcement or rescission of
3 this Agreement, or for monetary, injunctive or declaratory relief concerning or based
4 upon this Agreement, the prevailing party or parties shall be entitled to and be awarded
5 attorney's fees and costs.

6 16. CONTINUING JURISDICTION. This Court shall retain jurisdiction of this
7 matter for the purposes of enabling any of the parties to this Consent Decree to apply to
8 the Court at any time for such further orders or directives as may be necessary or
9 appropriate for the interpretation or modification of this Consent Decree, for the
10 enforcement of compliance therewith, or for the punishment of violations thereof.

11 JUDGMENT IS THEREFORE ENTERED pursuant to all the terms and
12 conditions recited above.

13
14 April __, 2012

15 _____
16 UNITED STATES DISTRICT JUDGE

17 The parties hereby consent to the terms and conditions of the Consent Decree as
18 set forth above and consent to the entry thereof.

19 Dated: April __, 2012

20 _____
21 RYAN PEARSON

Digitally signed by Steve Pearson
DN: cn=Steve Pearson, o, ou,
email=pearsontruck@comcast.net, c=US
Date: 2012.04.16 16:22:43 -07'00'

22 Dated: April __, 2012

23 _____
24 STEVE PEARSON

25 APPROVED:

26 ZYROMSKI KONICEK LLP

MERRILL, ARNONE & JONES, LLP

27 By: /s/ Thomas Kevin Konicek
28 Thomas Kevin Konicek
Attorneys for Defendant

By: /s/ William J. Arnone, Jr.
William J. Arnone, Jr.
Attorneys for Plaintiff

1 15. ATTORNEY'S FEES. In any action or proceeding among the Parties arising
2 from or in connection with this Agreement, or for breach, enforcement or rescission of
3 this Agreement, or for monetary, injunctive or declaratory relief concerning or based
4 upon this Agreement, the prevailing party or parties shall be entitled to and be awarded
5 attorney's fees and costs.

6 16. CONTINUING JURISDICTION. This Court shall retain jurisdiction of this
7 matter for the purposes of enabling any of the parties to this Consent Decree to apply to
8 the Court at any time for such further orders or directives as may be necessary or
9 appropriate for the interpretation or modification of this Consent Decree, for the
10 enforcement of compliance therewith, or for the punishment of violations thereof.

11 JUDGMENT IS THEREFORE ENTERED pursuant to all the terms and
12 conditions recited above.

13
14 April 26, 2012

15 
16 UNITED STATES DISTRICT JUDGE

17 The parties hereby consent to the terms and conditions of the Consent Decree as
18 set forth above and consent to the entry thereof.

19 Dated: April 20, 2012

20 
21 RYAN PEARSON

22 Dated: April __, 2012

23 STEVE PEARSON

24 APPROVED:

25 ZYROMSKI KONICEK LLP

26 MERRILL, ARNONE & JONES, LLP

27 By: _____
28 Thomas Kevin Konicek
Attorneys for Defendant

By: _____
William J. Arnone, Jr.
Attorneys for Plaintiff