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California ex rel. California Air Resources Board*

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Superior Court of California  
County of Los Angeles

MAR 06 2018

Sherri R. Carter, Executive Officer/Clerk  
By Karen Tapper, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA  
*EX REL.* CALIFORNIA AIR RESOURCES  
BOARD,  
  
Plaintiffs,  
  
v.  
  
PARAMOUNT PETROLEUM  
CORPORATION;  
ALON SUPPLY, INC.; and  
DOES 1 through 10, inclusive,  
  
Defendants.

Case No.: BC643285

~~PROPOSED~~ JUDGMENT PURSUANT  
TO STIPULATION

Judge: Hon. Richard L. Fruin  
Dept.: 15  
Trial Date: None set  
Action Filed: December 9, 2016

1 This Stipulated Judgment is entered into by and between Plaintiffs, the People of the State  
2 of California *ex rel.* the California Air Resources Board (“Board”), and Defendants Paramount  
3 Petroleum Corporation and Alon Supply, Inc. (collectively, “Defendants”).

4 **RECITALS**

5 A. The Board brought this action pursuant to Cal. Health & Safety Code Section  
6 43031.

7 B. California’s Low Carbon Fuel Standard regulation (“LCFS”), adopted under the  
8 California Global Warming Solutions Act of 2006, establishes carbon intensity standards that fuel  
9 providers either have to meet or fall below for each calendar year. Cal. Health & Safety Code, §  
10 38550 *et seq.*; Cal. Code Regs., tit. 17, § 95480 *et seq.*

11 C. The LCFS provides that low-carbon fuel producers and importers can generate  
12 credits by supplying transportation fuels with a carbon intensity below a stated standard.  
13 Producers and importers of high-carbon fuels, such as gasoline and petroleum-based diesel, must  
14 acquire and annually retire sufficient credits to match deficits generated by supplying fuel with a  
15 carbon intensity above the stated standard.

16 D. LCFS section 95491 requires quarterly and annual compliance reporting. LCFS  
17 section 95494 provides that each day that a required report remains unsubmitted, incomplete or  
18 inaccurate constitutes a separate violation. A regulated party’s annual compliance report must  
19 demonstrate a neutral or positive balance of credits.

20 E. In 2009, the Board first adopted the LCFS, which took effect in 2011, and, in  
21 2012, amended portions of the LCFS, which became effective on January 1, 2013 (the 2009 and  
22 2012 amendments to the LCFS are referred to as the “Original LCFS”). In 2013, the California  
23 Court of Appeal in *POET, LLC v. California Air Resources Board et al.*, 218 Cal. App. 4th 68,  
24 directed the issuance of a writ of mandate compelling the Board to take corrective action to  
25 remedy certain violations of the California Environmental Quality Act when it adopted the  
26 Original LCFS. In response, the Board set aside its approval and repealed the Original LCFS and  
27 adopted a new LCFS in 2015, which took effect on January 1, 2016 (the “2015 LCFS”).  
28

1 F. The Board filed a Complaint on December 9, 2016, alleging that Defendants failed  
2 to meet their obligations under the Original LCFS by reporting that their deficits exceeded their  
3 credits in the years 2012, 2013 and 2014, and that Defendants failed to submit accurate quarterly  
4 and annual compliance reports.

5 G. The Board alleged that Defendants are strictly liable for any and all deficits at the  
6 end of the year in an amount up to \$35,000 per day; are negligent and liable in an amount up to  
7 \$50,000 per day; and willfully and intentionally violated the LCFS and are liable in an amount up to  
8 to \$250,000 per day. Cal. Code Regs., tit. 17, 95484, subd. (d); Cal. Health & Safety Code, §  
9 43027, (a), (b), and (c). The Board further alleged that Defendants are liable in an amount up to  
10 \$25,000 per day for each day that any quarterly or annual report containing false information  
11 remains inaccurate. Cal. Code Regs., tit. 17, 95484, subd. (d) (original LCFS); Cal. Code Regs.,  
12 tit. 17, § 95494, subd. (b) (2015 LCFS); Cal. Health & Safety Code, § 43027, subd. (d).

13 H. In response to the Complaint, Defendants filed a demurrer asserting that the  
14 Original LCFS is void and no longer enforceable because it was “set aside” and repealed by the  
15 Board to comply with the writ issued in *POET, LLC v. State Air Res. Bd.*, Fresno County Superior  
16 Court, Case No. 09 CE CF 04659. On June 7, 2017, the Court overruled the Demurrer. On July  
17 20, 2017, Defendants filed a petition for a writ of mandate with the California Court of Appeal.  
18 On August 16, 2017, the Court of Appeal directed the Board to file an opposition, which the  
19 Board filed on August 25, 2017. On August 31, 2017, the Defendants filed a reply. On  
20 November 11, 2017, the parties filed a Joint Update Regarding Status of the Litigation and  
21 Anticipated Settlement with the Court of Appeal. On November 29, 2017, the Court of Appeal  
22 issued an order staying the appeal proceedings pursuant to the request of the parties.

23 I. In June 2017, after the Board’s LCFS Reporting Tool (“LRT”) prevented  
24 Defendants from filing its quarterly report, Defendants initiated an investigation to determine the  
25 reason for a detected imbalance of CARBOB quantities in the LRT. In or about September 2017,  
26 after substantially completing its investigation, Defendants reported to the Board the results of its  
27 findings, which identified additional credit deficits in 2011 and further reporting inaccuracies  
28 since 2011. On January 24, 2018, the Board filed a First Amended Complaint asserting

1 additional facts and violations against Defendants based upon the new recently discovered alleged  
2 errors.

3 J. In consideration of the foregoing, and of the promises and facts set forth herein,  
4 the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-  
5 listed alleged violations, and voluntarily agree to resolve this matter by means of this Agreement.  
6 The Board and Defendants enter into this Stipulated Judgment in a good faith effort to avoid the  
7 uncertainty and expense of protracted litigation, and without, unless otherwise expressly specified  
8 below, any admission of law or fact. This Stipulated Judgment is not an admission by Defendants  
9 regarding any issue of law or fact in the above-captioned matter or any violation of law;  
10 specifically, and without limitation, the enforceability of the Original LCFS. Nothing in this  
11 Stipulated Judgment shall prejudice, waive or impair any right, remedy, argument or defense that  
12 the Defendants may have in this or any other or future legal proceedings, except to the extent  
13 Defendants have expressly agreed to herein. Specifically, the Board and Defendants agree as  
14 follows:

15 **TERMS**

16 **I. JURISDICTION**

17 This court has jurisdiction over the subject matter of this action and the parties to this  
18 Stipulated Judgment.

19 **II. PENALTIES**

20 Defendants shall collectively pay to the "California Air Pollution Control Fund" the total  
21 sum of three hundred thousand dollars and zero cents (\$300,000.00) pursuant to Health and  
22 Safety Code section 43027. In the sole discretion of Defendants, the total payment of  
23 \$300,000.00 may be paid in full by either defendant or apportioned between the Defendants.  
24 Defendants shall make payment within thirty (30) days of entry of this Stipulated Judgment.

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1 All payments shall be sent, along with the attached Stipulated Judgment Payment  
2 Transmittal Form, to the attention of:

3 California Air Resources Board  
4 Accounting Office  
5 P.O. Box 1436  
6 Sacramento, California 95812-1436

6 **III. RELEASE OF CLAIMS**

7 Upon the Effective Date, the Board shall and does release, discharge and covenant not to  
8 sue or to take administrative action against Defendants, their parents, subsidiaries, and affiliates,  
9 including their respective its employees, officers, directors, and shareholders, for any and all  
10 Matters Covered. "Matters Covered" includes all claims, alleged violations, or causes of action  
11 alleged in, that arises out of or are related to the First Amended Complaint and all claims that  
12 could have been brought based on information known to the Board before the entry of this  
13 Stipulated Judgment regarding violations of the LCFS, and all violations covered by the  
14 associated notice of violation.

15 **IV. RETAINED JURISDICTION**

16 The Court shall retain jurisdiction pursuant to Code of Civil Procedure section 664.6 to  
17 enforce this Stipulated Judgment.

18 **V. ENFORCEMENT**

19 **A. Failure to Make Payments**

20 1. If Defendants fail to timely make any of the payments described in  
21 Sections II above, then the Board or its counsel shall give notice by electronic mail and by U.S.  
22 mail to Defendants at the following address:

23 Peter Duchesneau  
24 Manatt, Phelps & Phillips, LLP  
25 11355 W. Olympic Boulevard  
26 Los Angeles, CA 90064  
27 pduchesneau@manatt.com

28 Defendants shall have ten (10) calendar days from the date of such notice to cure the violation  
and make the payment ("Cure Period"). No further notices by the Board shall be required.

Defendants shall provide timely, written notification to the Board whenever Defendants'

1 foregoing contact information changes. If Defendants fail to provide the Board with such  
2 notification, then any notice by the Board to Defendants at the foregoing address shall constitute  
3 sufficient notice.

4           2.     If Defendants fail to pay the full amount within the Cure Period, then the  
5 Board or its counsel may make an *ex parte* application, as provided under applicable sections of  
6 the Code of Civil Procedure and Rules of Court, to the Court for an Order that Defendants pay the  
7 entire penalty amount of three hundred thousand dollars and zero cents (\$300,000.00) within  
8 thirty (30) days following the Order.

9           **B.     Effect of Bankruptcy**

10           The payments described in Section II, above, are made pursuant to the provisions of  
11 California Health and Safety Code section 43154. Therefore, it is agreed that the payments are  
12 non-dischargeable under 11 U.S.C § 523 (a)(7), which provides an exception from discharge for  
13 any debt to the extent that such debt is for a fine, penalty or forfeiture payable to and for benefit  
14 of a governmental unit, and is not compensation for actual pecuniary loss, other than certain types  
15 of tax penalties.

16           **VI.    COMPUTATION OF TIME**

17           If the last day for the performance of any act provided or required by this Stipulated  
18 Judgment falls on a weekend or holiday, then that period is extended to the next business day.  
19 “Holiday” means all holidays specified in Code of Civil Procedure section 135, and to the extent  
20 provided in Code of Civil Procedure section 12b, all days that by terms of section 12b are  
21 required to be considered as holidays.

22           **VII.   COSTS AND ATTORNEY’S FEES**

23           Except as provided by this Stipulated Judgment, each party shall bear its own costs and  
24 attorney’s fees.

25           **VIII. INTEGRATION**

26           This Stipulated Judgment contains all of the terms and conditions agreed upon by the  
27 parties relating to the matters covered by this Stipulated Judgment, and supersedes any and all  
28 prior and contemporaneous agreements, negotiations, correspondence, understandings, and

1 communications of the parties, whether oral or written, respecting the matters covered by this  
2 Stipulated Judgment. This Stipulated Judgment may be amended or modified only by a writing  
3 signed by the parties or their authorized representative, and then by order of the Court.

4 **IX. AUTHORITY TO EXECUTE**

5 Each party to this Stipulated Judgment represents and warrants that the person who has  
6 signed this Stipulated Judgment on its behalf is duly authorized to enter into this Stipulated  
7 Judgment, and to bind that party to the terms and conditions of this Stipulated Judgment.

8 **X. INTERPRETATION**

9 This Stipulated Judgment was drafted equally by all parties. The parties agree that the  
10 rule of construction holding that ambiguity is construed against the drafting party shall not apply  
11 to the interpretation of this Stipulated Judgment.

12 **XI. EFFECTIVE DATE**

13 The "Effective Date" of this Stipulated Judgment shall be the date that this Stipulated  
14 Judgment is entered by the Court.

15 **XII. COUNTERPART, EMAIL AND FACSIMILE SIGNATURES**

16 This Stipulated Judgment may be executed by the parties in counterparts, emails, or  
17 facsimiles, each of which shall be deemed an original, and all of which, when taken together,  
18 shall constitute one and the same document.

19 **XIII. FINAL JUDGMENT**

20 Upon approval and entry of the Stipulated Judgment by the Court, this Stipulated  
21 Judgment shall constitute a Final Judgment by the Court as to the Parties.

22  
23 **IT IS SO STIPULATED.**

24 For Paramount Petroleum Corporation

25 Dated: February 21, 2018

26 *M.T. Page*  
Name: *Mark Page*  
Title: *President*  
*Amy M. Harrison*  
Asst. Secretary

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For Alon Supply, Inc.

Dated: February 21, 2018

*Jimmy Crosby*  
Name: Jimmy Crosby  
Title: SVP  
*Angela Pruitt*  
Name: Angela Pruitt  
Title: VP

For People of the State of California ex rel. the California Air Resources Board

Dated: February \_\_\_\_, 2018

\_\_\_\_\_  
RICHARD W. COREY  
Executive Officer  
California Air Resources Board

APPROVED AS TO FORM.

Dated: February \_\_\_\_, 2018

XAVIER BECERRA  
Attorney General of California  
GARY E. TAVETIAN  
Supervising Deputy Attorney General

By: \_\_\_\_\_  
Adam L. Levitan  
*Attorneys for the People of the State of California ex rel. the California Air Resources Board*

Dated: February 22, 2018

MANATT, PHELPS & PHILLIPS, LLP  
*[Signature]*  
By: \_\_\_\_\_  
Peter Duchesneau  
*Attorneys for Paramount Petroleum Corporation and Alon Supply, Inc.*

IT IS SO ORDERED AND DECREED.

Dated: February \_\_\_\_, 2018

By: \_\_\_\_\_  
RICHARD L. FRUIN, JR.  
Judge of the Superior Court



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For Alon Supply, Inc.

Dated: February \_\_\_\_, 2018

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

For People of the State of California ex rel. the California Air Resources Board

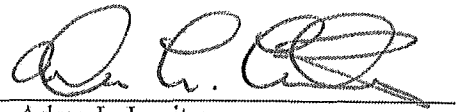
Dated: February 28, 2018

  
RICHARD W. COREY  
Executive Officer  
California Air Resources Board

APPROVED AS TO FORM.

Dated: February 28, 2018

XAVIER BECERRA  
Attorney General of California  
GARY E. TAVETIAN  
Supervising Deputy Attorney General

By:   
Adam L. Levitan  
*Attorneys for the People of the State of  
California ex rel. the California Air  
Resources Board*

Dated: February \_\_\_\_, 2018

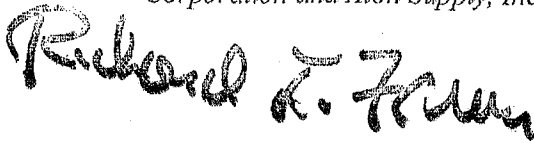
MANATT, PHELPS & PHILLIPS, LLP

By: \_\_\_\_\_  
Peter Duchesneau  
*Attorneys for Paramount Petroleum  
Corporation and Alon Supply, Inc.*

IT IS SO ORDERED AND DECREED.

MAR - 6 2018

Dated: February \_\_\_\_, 2018

  
By: \_\_\_\_\_  
RICHARD L. FRUIN, JR.  
Judge of the Superior Court