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SACRAMENTO COURTS
DEPT. #53

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8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF SACRAMENTO

12 PEOPLE OF THE STATE OF CALIFORNIA,
 13 Department of Toxic Substances Control,
 14 Plaintiff,
 15 v.
 16 HEAVENLY VALLEY L.P., DOES 1-20,
 17 Defendants.

Case No. **SA 2012-0007 7086**

**STIPULATION FOR SETTLEMENT
AND ENTRY OF JUDGMENT AND
PERMANENT INJUNCTION**

(Code of Civil Procedure § 664.6)

19
 20 Plaintiff People of the State of California *ex rel.* Debbie Raphael, Director, California
 21 Department of Toxic Substances Control ("Plaintiff" or the "Department") and Defendant
 22 Heavenly Valley L.P. ("Heavenly Valley" or "Defendant")¹ enter into this Stipulation for
 23 Settlement and Entry of Judgment and Permanent Injunction ("Stipulation"), and stipulate as
 24 follows:

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 26
 27 ¹ Plaintiff and Defendant also are individually referred to herein as "Party" or
 collectively referred to herein as the "Parties."
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VIA FAX

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1. THE COMPLAINT

Concurrently with this Stipulation for Settlement and Entry of Judgment and Permanent Injunction, the Department filed a Complaint for Civil Penalties and Injunctive Relief (“Complaint”) pursuant to the California Hazardous Waste Control Law, Health and Safety Code section 25100 et seq. (“HWCL”) and its implementing regulations against Defendant Heavenly Valley, L.P. as a generator of hazardous waste at Heavenly Valley Ski Resort, which is located on the South shore of Lake Tahoe, California on Heavenly Valley Mountain (“Site”).

2. AGREEMENT TO SETTLE DISPUTE

The Parties enter into this Stipulation pursuant to a compromise and settlement of disputed claims by mutually consenting to the entry by the Superior Court of the County of Sacramento (the “Court”) of the Final Judgment on Consent and Permanent Injunction the form attached as Exhibit 1 (“Judgment”). The Parties are each represented by counsel. The Office of the Attorney General represents the Department, and Paul Hastings represents Defendant. This Stipulation and the Judgment were negotiated and executed in good faith and at arms’ length by the Parties to avoid expensive and protracted litigation regarding the alleged violations of the HWCL and to further the public interest.

3. JURISDICTION AND VENUE

The Parties agree that this Court has subject matter jurisdiction over the matters alleged in the Complaint and personal jurisdiction over each of the Defendant. Venue is proper pursuant to Health and Safety Code section 25183.

4. WAIVER OF HEARING AND TRIAL AND ENTRY OF JUDGMENT

By signing and entering into this Stipulation, Defendant waives its right to a trial on matters alleged in the Complaint. Further, the Parties request entry of the Judgment on the terms set forth in this Stipulation.

5. APPLICABILITY

Unless otherwise expressly provided herein, the provisions of this Stipulation and the Judgment shall apply to and be binding on Heavenly Valley, L.P., (“Heavenly Valley” or “Defendant”) its subsidiaries and divisions, its parent companies, its officers and directors, its

1 successors and assignees or other entities, acting by, through, under or on behalf of Heavenly
2 Valley, and the Department and any successor agency of the Department that may have
3 responsibility for and jurisdiction over the subject matter of the Judgment.

4 **6. SETTLEMENT**

5 The Parties enter into this Stipulation as a compromise and settlement of disputed claims
6 for the purpose of avoiding prolonged and complicated litigation and in furtherance of the public
7 interest. The Parties agree that there has been no adjudication of any fact or law.

8 **7. INJUNCTION**

9 Defendant Heavenly Valley shall comply with the following:

10 A. Defendant Heavenly Valley shall maintain tank assessments and tank inspection
11 records for the used oil tank system at the upper maintenance shop as required by California Code
12 of Regulations, tit. 22, section 66265.195 on site as part of Defendant's operating record and
13 make the records available to the Department and the local Certified Unified Program Agency
14 upon request.

15 B. Defendant Heavenly Valley shall comply with California Code of Regulations, tit.
16 22, section 66265.16 regarding personnel training for all site employees subject to that
17 requirement and shall maintain these records and make them available to the Department and the
18 local Certified Unified Program Agency upon request.

19 C. Defendant Heavenly Valley shall conduct daily tank inspections for the used oil tank
20 system at the upper maintenance shop as required by California Code of Regulations, tit. 22,
21 section 66265.195, and shall document in its operating record the items reviewed and findings of
22 the tank inspection including, but not limited to, if repairs were done to the tank system.

23 D. Any spills or releases from the used oil tank system at the upper maintenance shop
24 shall be cleaned up immediately and noted in Defendant Heavenly Valley's daily log of
25 inspection, including the amount of waste cleaned up. Defendant Heavenly Valley shall maintain
26 the inspection log on site. Defendant shall comply with California Code of Regulations, tit. 22,
27 section 66265.196 with respect to leaks, spills or releases from the used oil tank system at the
28 upper maintenance shop.

1 E. An independent, qualified, professional engineer who is registered in the State of
2 California shall perform a written tank assessment of Defendant Heavenly Valley's used oil tank
3 system at the upper maintenance shop including ancillary equipment, once every five years, or if
4 any of Heavenly Valley's tank systems are modified or repaired, according to the requirements of
5 California Code of Regulations, tit. 22, section 66265.192. Defendant Heavenly Valley shall
6 implement any modifications, repairs or alterations, which are noted in the tank assessment.

7 F. Defendant Heavenly Valley shall provide and maintain secondary containment and
8 ancillary equipment in compliance with California Code of Regulations, tit. 22, section
9 66265.193 for its used oil tank system at the upper maintenance shop. In addition, Heavenly
10 Valley shall ensure that all cracks or damage in its secondary containment and ancillary
11 equipment for the used oil tank system at the upper maintenance shop are timely repaired.

12 **8. MONETARY SETTLEMENT REQUIREMENTS**

13 A. Defendant Heavenly Valley shall pay the Department the sum of ninety-four
14 thousand dollars (\$94,000) in civil penalties within 30 days of the "Effective Date" of the
15 Judgment. Defendant Heavenly Valley shall also pay the Department the sum of twenty six
16 thousand dollars (\$26,000) for the Department's administrative costs within 30 days of the
17 "Effective Date" of the Judgment.

18 B. The civil penalty of ninety-four thousand dollars (\$94,000) and the Department's
19 administrative costs of twenty-six thousand dollars (\$26,000) referenced in paragraph 8A above
20 shall be made by Defendant to the Department by cashier's check, payable to "California
21 Department of Toxic Substances Control," and shall bear the following notation: "Heavenly
22 Valley L.P." and shall be sent to:

23
24 Cashier
25 Accounting Office, MS-21A
26 Department of Toxic Substances Control
27 P.O. Box 806
28 Sacramento, CA 95812-0806

C. Defendant Heavenly Valley shall pay the Western States Project the sum of thirty

1 thousand dollars (\$30,000) within 30 days of the "Effective Date" of the Judgment. Defendant
2 Heavenly Valley's check shall be made payable to "Western States Project," identify Heavenly
3 Valley and the docket number of this court case, and shall be delivered to:

4 Western States Hazardous Waste Project
5 Attn: Lynn Cassidy, Executive Director
6 1100 W. Washington St., Suite 367
7 Phoenix, AZ 85007

8 D. An electronic (i.e., Adobe PDF) copy or paper photocopy of all checks and payments
9 made pursuant to the Judgment shall be sent, at the same time, to:

10 Sangat Kals, Section, Chief
11 State Oversight and Enforcement Branch
12 Enforcement and Emergency Response Program
13 Department of Toxic Substances Control
14 8800 Cal Center Drive
15 Sacramento, CA 95826-3200
16 Sangat.kals@dtsc.ca.gov

17 Nancy Bothwell, Senior Staff Counsel
18 Office of Legal Counsel, MS-23A
19 Department of Toxic Substances Control
20 1001 I Street
21 P.O. Box 806
22 Sacramento, CA 95812-0806
23 Nancy.bothwell@dtsc.ca.gov

24 9. SATISFACTION OF CIVIL PAYMENT REQUIREMENT

25 A. If within five (5) years after the date of entry of the Judgment, the Department
26 determines that Defendant: (a) violates an injunctive provision of this Stipulation or the
27 Judgment or (b) fails to make the payment required by Section 8 of this Stipulation and the
28 Judgment, and Defendant does not come into compliance according to the provisions of Section
9B, then Defendant shall pay a stipulated penalty of sixty six thousand dollars (\$66,000)
immediately to the Department.

B. If the Department determines that Defendant has defaulted under the terms of this
Stipulation or the terms of the Judgment, the Department will provide Defendant with written

1 notice of the default. Such written notice constitutes Defendant's notice of its reasonable
2 opportunity to come into compliance. If Defendant fails to come into compliance within thirty
3 calendar days of the date of the Department's notice, the Department may proceed to pursue all
4 its rights and remedies to enforce the Judgment. Notwithstanding the foregoing, nothing herein is
5 intended, or shall be construed, to preclude the Department from initiating an enforcement action
6 against Defendant as an alternative to enforcement of this Stipulation and the Judgment for any
7 violations of the HWCL not alleged to date by the Department.

8 **10. NOTICE**

9 All submissions and notices required by this Stipulation and the Judgment shall be in
10 writing, and shall be sent to:

11
12 For the Plaintiff:

13 Sangat Kals, Section Chief
14 State Oversight and Enforcement Branch
15 Enforcement and Emergency Response Program
16 Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

17 and

18
19 Nancy Bothwell, Senior Staff Counsel
20 Office of Legal Counsel
21 Department of Toxic Substances Control
1001 I Street, MS-23A
22 P.O. Box 806
Sacramento, CA 95812-0806

23
24 For Defendant:

25 Andrew M. Hensler
26 Vice President & Assistant General Counsel
27 Vail Resorts Management Company
390 Interlocken Crescent
28 Suite 1000

1 Broomfield, CO 80021

2 and

3
4 Robert Hoffman
5 Paul Hastings
6 55 Second Street, 24th Floor
7 San Francisco, CA 94105
8 Bar # 99344

9 All approvals and decisions regarding any matter requiring approvals or decisions
10 under the terms of this Stipulation and the Judgment shall be communicated in writing. Each
11 Party may change its respective representative(s) for purposes of notice by providing the name
12 and address of the new representative, in writing, to all Parties. Any such change will take effect
13 within seven calendar days of the date of the written notice.

14 **11. AUTHORITY TO ENTER STIPULATION**

15 Each signatory to this Stipulation certifies that he or she is fully authorized by the Party he
16 or she represents to enter into this Stipulation, to execute it on behalf of the party represented, and
17 to legally bind that party:

18 **12. NO WAIVER OF RIGHT TO ENFORCE**

19 The failure of the Department to enforce any provision of the Stipulation or Judgment
20 shall neither be deemed a waiver of such provision, nor in any way affect the validity of the
21 Judgment or the Department's enforcement authority. The failure of the Department to enforce
22 any such provision of this Stipulation or the Judgment shall not preclude it from later enforcing
23 the same or other provisions. No oral advice, guidance, suggestions, or comments by employees
24 or officials of the Department or Defendant, or people or entities acting on behalf of Defendant,
25 regarding matters covered in this Stipulation or the Judgment, shall be construed to relieve
26 Defendant of its obligations under this Stipulation or the Judgment.

27 **13. NO LIABILITY OF THE DEPARTMENT**

28 The Department shall not be liable for any injury or damage to persons or property
resulting from acts or omissions by Defendant, its officers, directors, employees, agents,
representatives, or contractors, in carrying out activities pursuant to this Stipulation or the

1 Judgment, nor shall the Department be held as a party to or guarantor of any contract entered into
2 by Defendant, its officers, directors, employees, agents, representatives, or contractors, in
3 carrying out the requirements of this Stipulation or the Judgment.

4 **14. FUTURE REGULATORY CHANGES**

5 Nothing in this Stipulation or the Judgment shall excuse Defendant from meeting any
6 more stringent requirements that may be imposed by applicable law or by changes in the
7 applicable law. To the extent future statutory and regulatory changes make Defendant's
8 obligations less stringent than those provided for in this Stipulation or the Judgment, Defendant
9 may apply to this Court by noticed motion to modify the obligations contained herein.

10 **15. INTEGRATION**

11 This Stipulation and the Judgment constitute the entire agreement between the Parties, and
12 may not be amended or supplemented except as provided for in this Stipulation or in the
13 Judgment. No oral representations have been made or relied on other than as expressly set forth
14 herein.

15 **16. RETENTION OF JURISDICTION**

16 The Parties agree that the Court has continuing jurisdiction to interpret and enforce the
17 provisions of this Stipulation and the Judgment.

18 **17. EQUAL AUTHORSHIP**

19 This Stipulation and the Judgment shall be deemed to have been drafted equally by all
20 Parties hereto. The Parties agree that the rule of construction holding that ambiguity is construed
21 against the drafting party shall not apply to the interpretation of this Stipulation or the Judgment.

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24 **18. AMENDMENTS TO THIS STIPULATION AND THE JUDGMENT**

25 This Stipulation and the Judgment may only be amended pursuant to a written agreement
26 signed by all the Parties, followed by written approval by the Court; or by order of the Court
27 following the filing of a duly noticed motion.

28 **19. COUNTERPARTS**

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This Stipulation may be executed in several counterpart originals, all of which taken together shall constitute an integrated document.

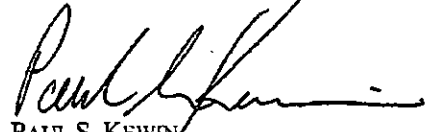
20. ENTRY OF JUDGMENT PURSUANT TO STIPULATION

The Parties further stipulate that upon approval of this Stipulation by the Court, the Court shall enter the Judgment in this matter in the form set forth in the attached Exhibit 1. The "Effective Date" of the Judgment is the date the Judgment is entered by the Court. If the Court does not approve this Stipulation and the Judgment in the form and substance proposed in Exhibit 1 hereto, each Party reserves the right to withdraw both the Stipulation and the Judgment upon written notice to all Parties and the Court.

IT IS SO STIPULATED.

Dated: ~~November~~ 3, 2012
December

For the Department of Toxic Substances Control



PAUL S. KEWIN
Assistant Deputy Director
Enforcement and Emergency Response Program
Department of Toxic Substances Control
1001 I Street
P.O. Box 806
Sacramento, 95812-0806
(916) 322-8521

1 Dated: November 29, 2012

For Defendant Heavenly Valley:

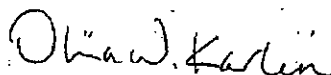
2 Heavenly Valley, Limited Partnership,
3 By VR Heavenly I, Inc., its General Partner

4 

5 FIONA ARNOLD
6 Executive Vice President and General Counsel
7 390 Interlocken Crescent, Suite 1000
8 Broomfield, CO 80021
(303) 404-1892

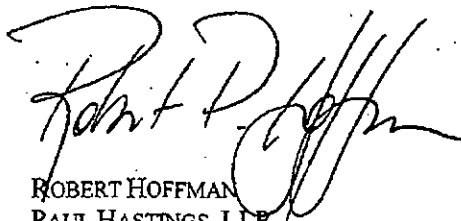
9 APPROVED AS TO FORM:

10 KAMALA D. HARRIS
11 Attorney General of California
12 Brian Hembacher
13 Supervising Deputy Attorney General

14 

15 OLIVIA W. KARLIN
16 Deputy Attorney General
17 Attorneys for Plaintiff
18 300 South Spring Street
19 Los Angeles, CA 90013
20 (213) 897-0473

21 Dated: November 29, 2012

22 

23 ROBERT HOFFMAN
24 PAUL HASTINGS, LLP
25 Attorneys for Defendant
26 55 Second Street, 24th Floor
27 San Francisco, CA 94105
28 (916) 552-6830

Bar # 99344

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