

EXHIBIT A

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Attorney for Plaintiffs

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
DOCKET NO. ATL-C-54-21

_____	:	
NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION and	:	
SHAWN LATOURETTE, COMMISSIONER	:	
OF THE NEW JERSEY DEPARTMENT OF	:	STIPULATION OF SETTLEMENT
ENVIRONMENTAL PROTECTION	:	AND JUDICIAL CONSENT ORDER
	:	
Plaintiffs,	:	Between Plaintiffs and
	:	Defendant Baja Auto
v.	:	Services, Inc.
	:	
BAJA AUTO SERVICES, INC. and	:	
THE ESTATE OF JEFF ALTMAN	:	
	:	
Defendants.	:	
_____	:	

This matter was opened to the Court by the Attorney General of New Jersey, attorney for Plaintiffs the New Jersey Department of Environmental Protection ("DEP" or the "Department") and the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner")(together, "Plaintiffs"), Matthew Novak, Deputy Attorney General, appearing; and Cullen and Dykman, LLP, attorneys for Defendant The Estate of Jeff Altman (the "Estate"), Amie Kalac, Esq., appearing. Plaintiffs and

Defendant Baja Auto Services, Inc., ("Baja Auto" or the "Settling Defendant") (together, the "Parties") having amicably resolved their dispute before trial, the parties hereby agree to the terms and the entry of this Stipulation of Settlement and Judicial Consent Order (the "JCO"),

IT IS STIPULATED AND AGREED, as follows:

I. BACKGROUND

1. On October 8, 2021 the Plaintiffs initiated this action by filing an Order to Show Cause and Verified Complaint ("Complaint") against the Settling Defendant, among others, pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 ("UST Act") and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 ("Spill Act").

2. The property that is the subject matter of the Complaint is located at 5803 Main Street, Mays Landing, Atlantic County, New Jersey, Block 807, Lot 5 on the Hamilton Twp. Tax Map ("Site").

3. Plaintiffs, in their Complaint, sought from Defendants the closure of four (4) previously registered out-of-service underground storage tanks (the "USTs") located on the Site in accordance with all applicable laws and regulations.

4. The Plaintiffs and Defendant the Estate of Jeff Altman agreed upon a settlement, approved by the Court, requiring the

removal of the USTs identified in the Verified Complaint. The Plaintiffs subsequently dismissed the case against Defendant the Estate of Jeff Altman with prejudice.

5. During the course of this action, Plaintiffs identified an additional, unregistered UST that had previously been discovered at the Site (the "Fifth UST") and remained in place. The Fifth UST is suspected to be an unregulated, former No. 2 heating oil tank.

6. The Parties to this JCO recognize, and this Court by entering this JCO finds, that the Parties to this JCO have negotiated this JCO in good faith; that the implementation of this JCO will avoid continued, prolonged and complicated litigation; and that this JCO is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this JCO and with approval of the Court, it is hereby **ORDERED and ADJUDGED**:

II. JURISDICTION

7. This Court has jurisdiction over the subject matter of this action pursuant to the UST Act and the Spill Act. This Court also has personal jurisdiction over the Parties to this JCO, solely for the purposes of implementing this JCO and resolving the underlying litigation.

8. The Parties to this JCO waive all objections and defenses they may have to the jurisdiction of this Court, or to venue in this County, for purposes of this action. The Parties shall not challenge the Court's jurisdiction to enforce this JCO.

III. PARTIES BOUND

9. This JCO applies to, and is binding upon, the Plaintiffs and the Settling Defendant. As the term is used herein, "Settling Defendant" shall mean Baja Auto Services, Inc., and shall also include, as applicable, any officers, owners, shareholders, affiliates, heirs, beneficiaries or administrators as appointed by the Court.

10. For purposes of clarity, this JCO shall not in any way change or modify the JCO entered into by and between Plaintiffs and Defendant the Estate of Jeff Altman in this action and shall not extend any liability for the Site to Defendant the Estate of Jeff Altman or any heirs, beneficiaries or administrators as appointed by the Court. Defendant the Estate of Jeff Altman is not a party to this JCO. However, due to Jeff Altman's interest in Baja Auto entity, and the lack of any financial resources available to Baja Auto, the Estate may arrange for Baja Auto's compliance with this JCO in exchange for payment upon the sale of the Site.

IV. DEFINITIONS

11. Unless otherwise expressly provided, terms used in this JCO that are defined in the UST Act, the Spill Act, or in the regulations promulgated under these acts, shall have their statutory or regulatory meaning.

V. PARTIES' OBJECTIVES

12. The Parties' objectives in entering into this JCO are to protect public health and safety and the environment by the Settling Defendant agreeing to effect the closure of the Fifth UST, in return for Plaintiffs agreeing to dismiss with prejudice the Complaint against the Settling Defendant and to resolve all of Plaintiffs' claims against the Settling Defendant concerning the Site and the judgment against Settling Defendant for the alleged violation of a previous Administrative Consent Order, except to the extent any claims are specifically reserved herein.

VI. SETTLING DEFENDANT'S COMMITMENTS

13. Settling Defendant agrees to make arrangements, and pay for, the closure of the Fifth UST, including the disposal of any contents and any necessary remediation in accordance with applicable provisions of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, et seq., and pursuant to any remediation standard.

14. Settling Defendant will, upon sale of the Site, pay Plaintiffs the following amount from the proceeds of the sale: \$11,879.76 in settlement of the outstanding judgment against them and \$50,000 in additional civil penalties, for a total of \$61,879.76. The remaining proceeds from the sale of the Site shall be paid to Defendant the Estate of Jeff Altman.

VII. SETTLING DEFENDANT'S RESERVATIONS

15. Baja Auto reserves any and all rights including, any right to contribution, defenses, claims, demands, and cause of action that Baja Auto may have concerning any matter, transaction, or occurrence concerning the Site against any person not party to this JCO.

VIII. PLAINTIFFS' COVENANTS & RELEASES

16. In consideration of the agreement to empty and close the Fifth UST on the Site as set forth in Section 6 above, Plaintiffs release the Settling Defendant from any and all liability for compliance, claims, violations and/or penalties arising from or relating to the Site. Within 10 days of the entry of this JCO by the Court, Plaintiffs will dismiss the within action against Settling Defendant with prejudice. Plaintiffs will retain the right to enforce the terms of this agreement.

17. In further consideration of Settling Defendant's agreement with regard to the Fifth UST, within 10 days of the entry of this JCO by the Court, Plaintiffs shall file a warrant of satisfaction of the DEP Judgment docketed on July 31, 2020 under docket no. MER DJ-083762-20 as against Baja Auto.

18. The release contained in Paragraph 16 above extends only to Settling Defendant and not to any other person or entity.

19. Nothing contained herein shall limit Settling Defendant's right to recover or seek contribution for any and all costs and/or fees associated with the Site from any responsible party including, without limitation, insurance carriers.

IX. PLAINTIFFS' RESERVATIONS

20. Subject to the provisions of this JCO, the Plaintiffs retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Site.

21. The release contained in Paragraph 16 above does not pertain to any matters other than those expressly stated. The Plaintiffs reserve, and this JCO is without prejudice to, all rights against the Settling Defendant concerning all other matters, including the following:

- i. claims based on the Settling Defendant's failure to satisfy any term or provision of this JCO;
- ii. liability arising from Settling Defendant's discharge of any hazardous substance during the closure of the Fifth UST at the Site;
- iii. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by the Settling Defendant in the future at the Site, other than as otherwise ordered or approved by Plaintiff DEP herein;
- iv. criminal liability;
- v. liability for any violation by the Settling Defendant of federal or state law, rule or regulation - including but not limited to, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, ARRCs and the Tech Rules - that occurs during the closure of the Fifth UST at the Site or is related to the closure of the Fifth UST at the Site.

X. SETTLING DEFENDANT'S COVENANTS

22. Settling Defendant covenants not to oppose entry of this JCO by this Court, or to challenge any provision of this JCO, unless the Plaintiffs notify the Settling Defendant, in writing, that they no longer support entry of the JCO and/or any

of Plaintiffs' Covenants or Releases set forth in Section 8 above.

23. The Settling Defendant further covenants not to sue or assert any claim or cause of action against the State, including any department, agency or instrumentality of the State, concerning the Site, other than as necessary to seek enforcement of any rights or benefits accorded to the Settling Defendant under this JCO.

24. The Settling Defendant's covenant not to sue or to assert any claim or cause of action against the State pursuant to Paragraph 23 above does not apply where the Plaintiffs sue or take administrative action against the Settling Defendant.

XI. FINDINGS & ADMISSIONS OF LIABILITY

25. Nothing contained in this JCO shall be considered an admission by the Settling Defendant or a finding by the Plaintiffs, of any wrongdoing, responsibility, or liability on the Settling Defendant's part for anything the Plaintiffs have alleged or have actual knowledge of having occurred at the Site prior to, through, and including as of the effective date of this JCO. This JCO is not intended to be, and shall not be construed or interpreted to be, an admission of liability or responsibility by Settling Defendant.

26. Neither this JCO, nor that fact that it has been signed, can be used by anyone for any purpose unrelated to the Site and the resolution of Plaintiffs' claims against Settling Defendant, other than for the enforcement of this JCO or its protections, or for the interpretation of this JCO. It may not be used in any way by or against any party to this action in any legal proceeding, except in an action to enforce this JCO.

XII. GENERAL PROVISIONS

27. Site Access. In addition to the Department's statutory and regulatory authority to enter and inspect the Site, Settling Defendants, to the extent Settling Defendant is exercising control over the Site, shall allow the Department and its authorized representatives access, upon reasonable written notice, to all areas of the Site to:

- a. Monitor the Settling Defendant's compliance with this Order.

28. The Plaintiffs enter into this JCO pursuant to the police powers of the State of New Jersey for the enforcement of the laws of the State and the protection of the public health and safety and the environment.

XIII. ACCESS TO INFORMATION

29. Upon receipt of a written request by one or more of the Plaintiffs, the Settling Defendant shall submit or make

available to the Plaintiffs all information the Settling Defendant has concerning the Fifth UST, including technical records and contractual documents, provided that such non-privileged information requested by one or more Plaintiffs is not already in the possession or control of any Plaintiff.

30. The Settling Defendant may withhold information based on a claim of confidentiality or privilege for any information requested by the Plaintiffs pursuant to this JCO, provided that the Settling Defendant shall produce a privilege log in a manner consistent with the New Jersey Rules of Court detailing any information withheld on the basis of confidentiality or privilege. The Settling Defendant, however, agrees not to assert any privilege or confidentiality claim to data related to Site conditions, sampling, or monitoring.

XIV. RETENTION OF RECORDS

31. The Settling Defendant shall preserve for a minimum of seven years after the effective date of this JCO, all data and information, including technical records, potential evidentiary documentation and contractual documents, in the Settling Defendant's possession or in the possession of its divisions, employees, agents, accountants, or contractors, which in any way concern the Site, despite any document retention policy to the contrary.

XV. NOTICES AND SUBMISSIONS

32. Except as otherwise provided in this JCO, whenever written notice or other documents are required to be submitted by one Party to another, they shall be directed to the individuals at the addresses specified below, unless those persons or their successors give notice of a change to the other Parties in writing.

As to Plaintiffs DEP, Commissioner:

CONTACT INFO

Michael Lutz
1510 Hooper Avenue
Toms River, NJ 08753
Michael.Lutz@dep.nj.gov

As to Defendant Baja Auto Services:

CONTACT INFO

James A. Tamburro, Esq.
58 Tallowood Drive
Medford, New Jersey 08055
jdtamburro@gmail.com

Amie Kalac, Esq.
Cullen and Dykman, LLP
229 Nassau Street
Princeton, New Jersey 08542
akalac@cullenllp.com

33. All submissions shall be considered effective upon receipt, unless otherwise provided in this JCO.

XVI. EFFECTIVE DATE

34. The effective date of this JCO shall be the date upon which this JCO is entered by the Court.

XVII. RETENTION OF JURISDICTION

35. This Court retains jurisdiction over both the subject matter of this JCO and the Parties for the duration of the performance of the terms and provisions of this JCO for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this JCO, or to effectuate or enforce compliance with its terms, or to resolve disputes, including any appeal from an administrative determination of a dispute between the Parties.

XVIII. MODIFICATION

36. Nothing in this JCO shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this JCO as agreed to by the Parties in writing.

XIX. ENTRY OF THIS JCO

37. This JCO is subject to, and conditioned upon, approval by the Court upon the filing of a Motion to Approve the JCO between the Parties by the Settling Defendant.

38. Upon approval of this JCO by the Court, the Settling Defendant consents to the entry of this JCO without further

notice, provided that approval is not made or conditioned upon any change(s) to the JCO.

39. If for any reason the Court should decline to approve this JCO in the form presented, this JCO is voidable at the sole discretion of any Party, and the terms of the JCO may not be used as evidence in any litigation between the Parties.

XX. SIGNATORIES/SERVICE

40. Each undersigned representative of a Party to this JCO certifies that he or she is authorized to enter into the terms and conditions of this JCO, and to execute and legally bind such Party to this JCO.

41. This JCO may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same JCO.

42. Settling Defendant shall identify on the attached signature pages, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this JCO. The Settling Defendant agrees to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

SO ORDERED this _____ day of _____, 2023.

HON. M. Susan Sheppard,
P.J.Ch.

Dated: 3/30/23

By: Michael R. Hastry
Michael Hastry
New Jersey Department of
Environmental Protection Division
of UST Compliance and Enforcement

Ann N. Wolf 3/29/2023
Ann Wolf
New Jersey Department of
Environmental Protection Division
of Enforcement, Tech, and
Financial Support

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Attorney for Plaintiffs

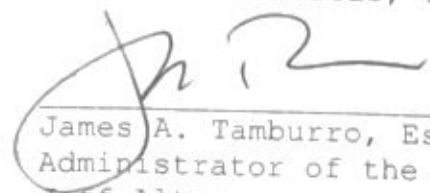
Dated:

By: Matthew Novak
Matthew Novak
Deputy Attorney General

BAJA AUTO SERVICES, INC.

Dated:

By:



James A. Tamburro, Esq.,
Administrator of the Estate of
Jeff Altman