

Brianna Bergen - Comments and documents for Nursery Products WDRs 3

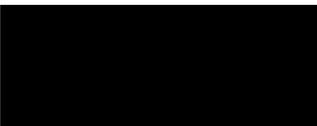
From: "D. Norman Diaz" <[REDACTED]>
To: Brianna Bergen <[REDACTED]>
Date: 11/23/2009 2:08 PM
Subject: Comments and documents for Nursery Products WDRs 3
Attachments: IMG_3351.jpg; IMG_3352.jpg; IMG_3353.jpg; IMG_3354.jpg; IMG_3355.jpg; IMG_3356.jpg; IMG_3357.jpg; IMG_3358.jpg; IMG_3359.jpg; IMG_3360.jpg; IMG_3361.jpg; f-NurseryProductsàomplaint(2).PDF; g-NurseryProductsàP.I. (Final).PDF

Ms Bergen

Please consider these comments and documents for your WDRs for Nursery Products LLC or any other Nursery Products or sewage sludge permits:

1. Pictures from the Legal paperwork in the City of Adelanto VS Nursery Products LLC. Shows wastewater spilling onto roadway and public streets. This was a much smaller facility than proposed for Hinkley. Did NPLLC have the same standards than as being placed on them now? Did they violate Lahonton permits in Adelanto? Did Bio-Gro also violate Lahonton permits in Antelope Acres in the late 1990's? Shouldn't this material be handled indoors to better contain the potential problems? The Hinkley facility is expecting 100 trucks a day on unpaved roads without truck washing facilities.
- 2.and 3. Legal documents from Adelanto showing violations and history of non-compliance and lack of regard of conditions set forth by permitting agencies. 2005

Norman



1 MARGUERITE P. BATTERSBY (State Bar No. 115422)
2 CITY ATTORNEY
3 CITY OF ADELANTO

4 RICHARDS, WATSON & GERSHON
5 A Professional Corporation
6 MITCHELL E. ABBOTT (State Bar No. 64990)
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8 GINETTA L. GIOVINCO (State Bar No. 227140)



Govi FILED 6103
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
VICTORVILLE DISTRICT
JUL 08 2005
COPY
BY [Signature]

9 Attorneys for Plaintiffs,
10 *People of the State of California and City of Adelanto*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN BERNARDINO**
13 **VICTORVILLE DISTRICT**

14 PEOPLE OF THE STATE OF
15 CALIFORNIA; CITY OF ADELANTO,

16 Plaintiffs,

17 v.

18 NURSERY PRODUCTS, LLC;
19 JEFFREY P. MEBERG;
20 CHRISTOPHER M. SENEY; and DOES
21 1 through 20, inclusive,

22 Defendants.

Case No. **VCVVS 038427**

**COMPLAINT FOR
PRELIMINARY AND
PERMANENT INJUNCTION AND
FOR MONEY DAMAGES**

RW RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION
KG

1 Plaintiffs allege:
2

3 **FIRST CAUSE OF ACTION**

4 (By Plaintiffs Against All Defendants for Preliminary
5 and Permanent Injunction to Abate a Public Nuisance)

6 1. This action is brought in the name of the People of the State of
7 California and the City of Adelanto by the City Attorney of the City of Adelanto
8 pursuant to Code of Civil Procedure Section 731 to abate a public nuisance.

9 2. At all times material hereto, the City of Adelanto was and is a
10 municipal corporation, duly incorporated and existing under and pursuant to a
11 Charter and the Constitution of the State of California, and situated within the
12 County of San Bernardino.

13 3. Plaintiffs are informed and believe and thereupon allege that at all
14 times material hereto, defendant, Nursery Products, LLC, was and is a limited
15 liability company, duly organized and existing under the laws of the State of
16 California with its principal office and place of business located at 647 Camino de
17 los Mares, Suite 108-174, San Clemente, California

18 4. Plaintiffs are informed and believe and thereupon allege that at all
19 times material hereto, defendant, Jeffrey P. Meberg, was and is the president, sole
20 shareholder, and owner of Nursery Products, LLC.

21 5. Plaintiffs are informed and believe and thereupon allege that at all
22 times material hereto, defendant, Christopher M. Seney, was and is the General
23 Manager and managing agent responsible for the day-to-day operations of Nursery
24 Products, LLC.

25 6. Plaintiffs are ignorant of the true names and capacities, whether
26 individual, corporate, or otherwise, of the defendants named herein as Does 1
27 through 20, inclusive, and plaintiffs therefore sue these defendants by their
28 fictitious names. Plaintiffs will amend this complaint to state the true names and

1 capacities of such fictitiously named defendants when the same have been
2 ascertained.

3 7. Plaintiffs are informed and believe and thereupon allege that at all
4 times material hereto, defendants were and are the owners of that certain 40-acre
5 parcel of real property (hereinafter referred to as the “subject property”) commonly
6 known as 16284 Aster Road in the City of Adelanto, and whose legal description
7 is:

8 the SE 1/4 of the SE 1/4, Tract 1, Section 6, TP 5N, R 5W, Ex E 30 ft.
9 Co. Rd. 39.09 AC M/L, S.B.M., County of San Bernardino, (APN:
10 3128-081-02-0000).

11 8. The Planning Commission of the City of Adelanto issued a
12 Conditional Use Permit to defendants for the operation of a composting facility on
13 the subject property on December 4, 2001. Defendants commenced operation of
14 their “composting facility” on the subject property in the Spring of 2002. Contrary
15 to what the defendants promised when they appeared before the Planning
16 Commission to obtain their Conditional Use Permit, the composting operation on
17 the subject property (involving the organic decomposition of wood, green-waste,
18 and sewage sludge, euphemistically described as “human bio-solids”) has been
19 responsible for an intense, foul stench, accompanied by swarms of flies, which has
20 severely affected homes, schools, and businesses in the area of the subject
21 property.

22 9. The City Council of the City of Adelanto conducted a public hearing
23 on November 5, 2003 to receive public comments about the composting facility.
24 The hearing commenced at 6:00 p.m. and adjourned at 10:43 p.m. During this 4¾-
25 hour hearing, the City Council heard the following testimony (quoted from the
26 City Council Minutes) from local residents, businessmen, and workers about foul
27 odors, flies, dust, and debris emanating from the composting operation on the
28 subject property:

1 ➤ Ms. Elly Burd, an employee at the DWP facility across the street from
2 the composting facility, stated that because of the smell, “she found it hard to
3 breathe and her allergies have been kicking up. She never had allergies before,
4 her eyes are watering, her clothes smell. You open your car door and hundreds of
5 flies go in.”

6 ➤ Ms. Joy Jeannette stated that “She bought a new barbeque grill and
7 hasn’t been able to use it because of the flies.”

8 ➤ Ms. Sara Ruiz spoke about “the discomfort the kids were having
9 when they went to Richardson Park to play or practice. Especially the hardship of
10 the kids who have asthma, their eyes water and turn red.”

11 ➤ Ms. Terri Fruergaard stated that “Father’s Day was ruined because
12 they couldn’t go outside.”

13 ➤ Ms. Elivra Santoyo spoke about “the flies and smell which has
14 prevented them from doing outside activities. They have to stay indoors and the
15 children can’t go outside to play . . .”

16 ➤ Ms. Rejeana DeHart declared that “She was not happy about the flies
17 or the smell caused from this facility. She stated, the smell starts as early as 5:15
18 a.m.”

19 ➤ Mr. Ron Holst, a DWP employee, stated that “They’ve had to
20 purchase beekeeper hats in order to perform maintenance on high voltage
21 equipment, the netting was necessary to keep flies away from workers’ mouths,
22 eyes, and ears. . . . The employees can no longer eat their lunches outdoors.”

23 ➤ Ms. Lupe Ortiz “Spoke about the embarrassment of having to rent a
24 hotel for company because the house was infested with flies.”

25 ➤ Mr. Robert D. Curran said in a letter submitted to the City Council,
26 “The smell from the current operation is extremely noxious and is causing health
27 problems to our current employees. We have regular complaints from our
28 employees, vendors and other visitors regarding the smell . . .”

1 10. The noxious odors, swarms of flies, and dust and airborne trash
2 emanating from the subject property have persisted to the present day. Demands
3 by plaintiffs to control these problems have been ignored by defendants.

4 11. By reason of the persistent noxious odors emanating from the subject
5 property, the composting operation operated by defendants on the subject property
6 constitutes a public nuisance within the contemplation of Civil Code Sections
7 3479 and 3480.

8 12. By reason of the persistent swarms of flies and other insects
9 emanating from the subject property, the composting operation operated by
10 defendants on the subject property constitutes a public nuisance within the
11 contemplation of Civil Code Sections 3479 and 3480.

12 13. By reason of the persistent problems of dust and airborne trash and
13 debris emanating from the subject property, the composting operation operated by
14 defendants on the subject property constitutes a public nuisance within the
15 contemplation of Civil Code Sections 3479 and 3480.

16 14. Unless restrained and enjoined by this Court, defendants will
17 continue to create and maintain a public nuisance by operating their composting
18 facility on the subject property, thereby causing great and irreparable injury to the
19 People of the State of California and the City and disturbing and violating the
20 rights of residents, business owners, and workers in the area. Plaintiffs have no
21 plain, speedy, or adequate remedy at law and injunctive relief is expressly
22 authorized by Code of Civil Procedure Section 731 for purposes of abating a
23 public nuisance.

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SECOND CAUSE OF ACTION

(By Plaintiff, City of Adelanto, Against Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, for Preliminary and Permanent Injunction to Enforce a Settlement Agreement)

15. Plaintiff, City of Adelanto, repeats the allegations contained in paragraphs 1 through 14 and incorporates them herein by this reference as though set forth again in full.

16. In November 2003, defendants, Nursery Products, LLC, and Jeffrey P. Meberg, filed a federal civil rights lawsuit against the City of Adelanto, seeking to enjoin the City from interfering with the operation of the composting facility on the subject property. That lawsuit, entitled *Nursery Products, LLC and Jeffrey Meberg v. City of Adelanto* (U.S.D.C., C.D. Cal., Docket No. SACV 03-1622-GLT (ANx)) terminated when summary judgment was entered in favor of the City of Adelanto on October 7, 2004. Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, appealed from the judgment to the United States Court of Appeals for the Ninth Circuit.

17. While the appeal was pending, on or about November 1, 2004, plaintiff, City of Adelanto, and defendants, Nursery Products, LLC, and Jeffrey P. Meberg, entered into a Mutual Release and Settlement Agreement (“Settlement Agreement”), the key terms of which called for defendants to dismiss the appeal, to cease receiving and processing green waste, bio-solids, and other composting material at the composting facility on the subject property as of July 1, 2005, and to cease composting operations altogether as of September 1, 2005. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A and incorporated herein by this reference. Paragraph III A of the Settlement Agreement provides, in part:

“1. Nursery Products and Meberg shall, on or before July 1, 2005, cease and desist from receiving and processing green waste,

1 bio-solids, or any other organic material for composting at the
2 Composting Facility located at 16284 Aster Road in the City of
3 Adelanto.

4 “2. Nursery Products and Meberg shall, on or before
5 September 1, 2005, permanently cease and desist from conducting
6 composting activities at 16284 Aster Road in the City of Adelanto.”

7 18. On June 21, 2005, defendant Nursery Products, LLC, through its legal
8 counsel, provided express written assurance to the City that it would stop
9 receiving waste and bio-solids at the subject property on July 1, 2005 and would
10 otherwise comply with the terms of the Settlement Agreement.

11 19. In violation of the Settlement Agreement, and in direct contradiction
12 of their subsequent written assurance, defendants have continued beyond July 1,
13 2005, to receive and off-load green waste, bio-solids, and other organic material
14 for composting at the subject property.

15 20. On July 5, 2005, defendant Christopher M. Seney, General Manager
16 of the Nursery Products composting facility, informed Kevin Murphy, the City’s
17 Senior Code Enforcement Officer, that defendant Jeffrey P. Meberg had instructed
18 him to continue receiving and off-loading composting materials until advised
19 otherwise, a wilful breach of the Settlement Agreement.

20 21. By continuing to receive shipments of green waste, bio-solids, and
21 other composting material at the composting facility after the July 1, 2005, shut-
22 off date, defendants have breached the Settlement Agreement to the detriment of
23 the City of Adelanto and its residents.

24 22. Given defendants’ continued acceptance of shipments of green waste,
25 biosolids, and other organic material at the subject property after the July 1, 2005,
26 cut-off date, in violation of the Settlement Agreement and in wilful disregard of
27 subsequent written assurances, plaintiff, City of Adelanto, has no confidence that
28 defendants will comply with the further provision of the Settlement Agreement

1 that they permanently stop composting activities altogether on or before
2 September 1, 2005.

3 23. Plaintiff is informed and believes and thereupon alleges that unless
4 restrained and enjoined by this Court, defendants will continue to breach the
5 Settlement Agreement by continuing to receive and process green waste, bio-
6 solids, and other composting materials at their composting facility, thereby
7 causing great and irreparable injury to the City of Adelanto and its residents and
8 disturbing and violating the rights of residents, businessmen, and workers in the
9 area. The injury which will be sustained by the City and its residents is incapable
10 of being compensated in money damages, and will require the City to commence
11 and maintain a multiplicity of separate actions as injuries accrue, for all of which
12 plaintiff, City of Adelanto, has no plain, speedy or adequate remedy at law.

13 24. Additionally and alternatively, the City is entitled to a Decree of
14 Specific Performance, requiring defendants to specifically perform the terms of the
15 Settlement Agreement by immediately refraining from receiving and processing
16 green waste, bio-solids, and other composting material at the composting facility
17 on the subject property.

18 25. Plaintiff, City of Adelanto, has incurred substantial expense in
19 commencing and prosecuting this lawsuit to enforce the Settlement Agreement.
20 Pursuant to paragraph III L of the Settlement Agreement, plaintiff is entitled to
21 recover from defendants, Nursery Products, LLC, and Jeffrey P. Meberg,
22 reasonable attorney's fees, costs, and necessary disbursements in addition to any
23 other relief to which plaintiff may be entitled.

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THIRD CAUSE OF ACTION

(By Plaintiff, City of Adelanto, Against Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, for Money Damages for Breach of a Settlement Agreement)

26. Plaintiff, City of Adelanto, repeats the allegations contained in paragraphs 1 through 25 and incorporates them herein by this reference as though set forth again in full.

27. Pursuant to paragraph III E of the Settlement Agreement, defendants, Nursery Products, LLC, and Jeffrey P. Meberg, agreed, promised, and undertook to construct water lines, fire hydrants, and other required fire suppression facilities on the subject property.

28. Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, have breached the Settlement Agreement by failing and refusing to construct water lines, fire hydrants, and other required fire suppression facilities on the subject property as required by paragraph III E.

29. Pursuant to paragraph III F of the Settlement Agreement, defendants, Nursery Products, LLC, and Jeffrey P. Meberg, agreed, promised, and undertook to install certain street lighting improvements on Pansy Road, adjacent to the subject property.

30. Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, have breached the Settlement Agreement by failing and refusing to install the street lighting improvements on Pansy Road as required by paragraph III F.

31. Pursuant to paragraph III G of the Settlement Agreement, defendants, Nursery Products, LLC, and Jeffrey P. Meberg, agreed, promised, and undertook to install plantings and landscaping improvements around the perimeter of the subject property.

32. Defendants, Nursery Products, LLC, and Jeffrey P. Meberg, have breached the Settlement Agreement by failing and refusing to install plantings and

1 landscaping improvements around the perimeter of the subject property as
2 required by paragraph III G.

3 33. As a result of the breaches of the Settlement Agreement plaintiff, City
4 of Adelanto, has been damaged in an amount not now known, but which is not less
5 than \$25,000. Plaintiff is entitled to recover said damages from defendants
6 Nursery Products, LLC, and Jeffrey P. Meberg, and will seek leave of court to
7 amend this complaint when the exact amount of said damages is known.

8 34. Plaintiff, City of Adelanto, has incurred substantial expense in
9 commencing and prosecuting this lawsuit to enforce the Settlement Agreement.
10 Pursuant to paragraph III L of the Settlement Agreement, plaintiff is entitled to
11 recover from defendants, Nursery Products, LLC, and Jeffrey P. Meberg,
12 reasonable attorney's fees, costs, and necessary disbursements in addition to any
13 other relief to which plaintiff may be entitled.

14 **WHEREFORE**, plaintiffs, the People of the State of California and the
15 City of Adelanto, pray for judgment against the defendants, Nursery Products,
16 LLC, Jeffrey P. Meberg, and Christopher M. Seney, and each of them, as follows:

17 On the First Cause of Action:

18 1. That defendants, Nursery Products, LLC, Jeffrey P. Meberg, and
19 Christopher M. Seney, and each and all of their agents, employees,
20 representatives, officers, directors, and any and all persons acting in concert with
21 them, be preliminarily and permanently enjoined and restrained from:

- 22 (a) receiving and processing green waste, bio-solids, or any other
23 organic material for composting at the subject property, located at
24 16284 Aster Road in the City of Adelanto; and
- 25 (b) operating a composting facility at the subject property on or
26 after September 1, 2005.

27 2. That defendants, and each and all of their agents, employees,
28 representatives, officers, directors, and any and all persons acting in concert with

1 them, be permanently enjoined and commanded to remove all composting
2 materials from the subject property.

3 On the Second Cause of Action:

4 3. That defendants Nursery Products, LLC and Jeffrey P. Meberg, and
5 each and all of their agents, employees, representatives, officers, directors, and any
6 and all persons acting in concert with them, be preliminarily and permanently
7 enjoined and restrained from receiving and processing green waste, bio-solids, or
8 any other organic material for composting at the subject property and from
9 conducting composting activities at the subject property after September 1, 2005.

10 4. That the Court issue a Decree of Specific Performance, ordering
11 defendants Nursery Products, LLC and Jeffrey P. Meberg to specifically perform
12 the terms of the Settlement Agreement including, but not limited to, ceasing and
13 desisting from receiving and processing green waste, bio-solids, or any other
14 organic material for composting at the subject property, and permanently ceasing
15 composting activities at the subject property on or before September 1, 2005.

16 On the Third Cause of Action:

17 5. That the Court award money damages to plaintiff, City of Adelanto,
18 against the defendants, Nursery Products, LLC, and Jeffrey P. Meberg, in an
19 amount to be proved at trial, with interest thereon at the legal rate from July 1,
20 2005.

21 On All Causes of Action:

22 6. That plaintiffs have and recover from defendants their costs of suit
23 herein, including reasonable attorney's fees as provided in the Settlement
24 Agreement; and

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1 7. That the Court grant such other and further relief as may seem just in
2 the circumstances.

3
4 DATED: July 8, 2005

MARGUERITE P. BATTERSBY
CITY ATTORNEY
CITY OF ADELANTO

6 RICHARDS, WATSON & GERSHON
7 A Professional Corporation
8 MITCHELL E. ABBOTT
9 T. PETER PIERCE
10 GINETTA L. GIOVINCO

11 By: 
12 Mitchell E. Abbott
13 Attorneys for Plaintiffs,
14 *People of the State of California*
15 *and City of Adelanto*

16 **[PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 446, THIS**
17 **COMPLAINT IS DEEMED VERIFIED BY OPERATION OF LAW.]**

SETTLEMENT AGREEMENT

I. PARTIES

The parties to this agreement are Nursery Products, LLC, a California limited liability company ("Nursery Products"), Jeff Meberg ("Meberg"), and the City of Adelanto ("City").

II. RECITALS

A. The Composting Facility

Nursery Products owns and operates a composting facility ("Composting Facility") located at 16284 Aster Road, in the City of Adelanto. This Composting Facility consists of approximately 40 acres of graded land, a trailer with offices, and various pieces of equipment. The Composting Facility receives and processes both "green waste" (grass clippings, wood chips, and similar materials) and bio-solids (treated sewage). After approximately 60 days of processing at the Composting Facility, the finished material is sold as agricultural fertilizer.

B. The Existing Bio-Solids Agreement

Prior to commencing operations of the Composting Facility, Nursery Products and the City entered into an agreement under which Nursery Products agreed to accept for processing, process, and dispose of up to five thousand (5,000) tons per year of Class "B" bio-solids generated at the City's wastewater treatment plant, without cost to the City or its residents, for a period of fifty (50) years. Under the agreement the City is responsible for transporting bio-solids to the Composting Facility, and for paying the costs of transport.

C. The Application for an Expanded Permit

In 2003, Nursery Products applied to the California Integrated Waste Management Board ("CIWMB") for an expanded solid waste facilities permit that

would allow it to increase the amount of material composed annually by nearly 700%. The City expressed concerns to the CIWMB about expanding the capacity of the Composting Facility. The CIWMB has taken no action on the application for the expanded permit.

D. The Lawsuit

On November 17, 2003, Nursery Products and Meberg filed a lawsuit against the City in the United States District Court, Central District of California (Docket number SACV 03-1622-GLT (ANx)). The lawsuit alleged, in substance, that the City had violated the plaintiffs' due process rights, had impermissibly interfered with Nursery Products' business, and had caused harm to Nursery Products' and Meberg's reputations. Summary judgment in favor of the City was entered by the Court on October 8, 2004.

E. Attorney's Fees Motion

The City has advised Nursery Products and Meberg of the City's intention to bring a motion for an award of its reasonable attorney's fees incurred in defending the lawsuit, pursuant to 42 U.S.C. §1988. Nursery Products and Meberg dispute the City's entitlement to recover its attorney's fees. Additionally, the City on October 21, 2004, filed an application for an order taxing costs against Nursery Products and Meberg.

F. Settlement

The parties desire to avoid the risk and expense of further litigation and appeals, and desire fully and finally to resolve any and all claims by the City against Nursery Products and Meberg for the recovery of attorney's fees and costs, and to achieve certainty regarding the future operation of the Composting Facility and the disposal of sewage sludge generated at the City's wastewater treatment plant.

III. AGREEMENT

The parties agree as follows:

A. Cessation of Operations at and Relocation of the Composting Facility

1. Nursery Products and Meberg shall, on or before July 1, 2005, cease and desist from receiving and processing green waste, bio-solids, or any other organic material for composting at the Composting Facility located at 16284 Aster Road in the City of Adelanto.

2. Nursery Products and Meberg shall, on or before September 1, 2005, permanently cease and desist from conducting composting activities at 16284 Aster Road in the City of Adelanto.

3. Nursery Products and Meberg shall, on or before September 1, 2005, remove all green waste, bio-solids, or other composting material, including all finished compost material and related equipment, from the Composting Facility and shall clean and clear the site, *provided, however*, that finished compost material and fertilizer may be retained on the site in connection with the operation of a wholesale/retail commercial nursery business, subject to such conditions as may be imposed by the City.

4. Nursery Products and Meberg shall, use their best efforts to relocate the Composting Facility to a new site, located within or outside the City limits of the City of Adelanto, and to obtain all necessary permits therefor, on or before September 1, 2005.

B. Abandonment of Conditional Use Permit

The parties agree that the Conditional Use Permit approved by the Planning Commission on December 4, 2001 shall be deemed abandoned and shall have no further force and effect as of September 1, 2005, or upon such earlier date as composting activities cease at the Composting Facility site.

C. Amendment to Bio-Solids Agreement

Concurrently with the execution of this Settlement Agreement, the parties shall execute an Amendment to the existing Bio-Solids Agreement, in the form attached hereto as Exhibit A.

D. Change of Name or Corporate Entity

The parties anticipate that the new composting facility may be operated under a business name different from Nursery Products, or by a corporate entity different from Nursery Products. The parties hereby agree that this Settlement Agreement, and the Amendment to the existing Bio-Solids Agreement, shall apply to and be binding upon any corporate or other legal entity in which Nursery Products or Meberg has an ownership interest, and which is engaged in the composting business in the County of San Bernardino or at a location determined by the City to be within a reasonable distance for delivery of bio-solids generated at the City's wastewater treatment plant.

E. Compliance Schedule: Fire Hydrants

1. Nursery Products and Meberg shall submit to the City, on or before January 1, 2005, complete plans for installation of all fire hydrants required by the City's Fire Department for the Composting Facility.

2. Nursery Products and Meberg shall, on or before March 1, 2005, commence construction of water lines, fire hydrants, and other required fire suppression facilities in accordance with plans approved by the City of Adelanto.

3. Nursery Products and Meberg shall, on or before September 1, 2005, complete construction of water lines, fire hydrants, and other required fire suppression facilities in compliance with plans approved by the City of Adelanto.

F. Compliance Schedule: Street Lighting

1. Nursery Products and Meberg shall submit to the City, on or before January 1, 2005, complete plans for installation of all street lighting on Pansy Road as required for the Composting Facility.
2. Nursery Products and Meberg shall, on or before July 1, 2005, commence construction of street lighting on Pansy Road in accordance with plans approved by the City of Adelanto.
3. Nursery Products and Meberg shall, on or before September 1, 2005, complete construction of street lighting on Pansy Road in accordance with plans approved by the City of Adelanto.

G. Compliance Schedule: Landscaping

1. Nursery Products and Meberg shall submit to the City, on or before January 1, 2005, complete plans for landscaping the perimeter of the site, as required by the Mitigation Monitoring Plan approved by the Planning Commission on December 4, 2001.
2. Nursery Products and Meberg shall, on or before July 1, 2005, commence planting and landscaping on the perimeter of the site, in accordance with plans approved by the City of Adelanto.
3. Nursery Products and Meberg shall, on or before September 1, 2005, complete planting and landscaping on the perimeter of the site, in accordance with plans approved by the City of Adelanto.

H. Compliance Schedule: Paving of Aster Road

1. As of September 1, 2005, or upon such earlier date as composting activities cease at the Composting Facility site, the obligation of Nursery Products and Meberg to pave the entirety of Aster Road, as required by the Conditional Use Permit approved by the Planning Commission on December 4, 2001, shall be deemed vacated.

2. Nursery Products and Meberg understand and agree that a condition of issuance of a Certificate of Occupancy for any future use of the subject property shall be a requirement that all required dedications and improvements abutting rights-of-way for the site have been made to the ultimate right-of-way shown in the General Plan and as determined by the City Engineer, as provided in Adelanto Municipal Code Section 17.10.090, *et seq.* Specifically, Nursery Products and Meberg understand and agree that, as a condition of operating any business or commercial activity on the subject property, they will be required to construct and install curbs, gutters, sidewalks, street trees, traffic improvements and drainage on Aster Road, and to pave Aster Road to the center line, as provided in Adelanto Municipal Code Section 17.10.090(a)(1).

3. As a condition and term of this Settlement Agreement, the City, Nursery Products, and Meberg agree that in lieu of the required improvements, the City Council shall accept from Nursery Products and Meberg an agreement to make the specified improvements concurrently upon the development of the parcels of property located to the east of the subject property, and identified as Assessor's Parcel Nos. 3128-121-01, 3128-121-02, and 3128-121-03, but in any event not later than September 1, 2010, as provided in Adelanto Municipal Code Section 17.10.090(d)(1). The City, Nursery Products, and Meberg agree that the agreement to make the specified improvements shall be accompanied by security deposits, a corporate surety bond, or other security as authorized by the City Engineer, as provided in Adelanto Municipal Code Section 17.10.090(d)(2) and (3), and further that the security required shall be similar to that required of other owners of similar property.

4. Nursery Products and Meberg understand and agree that a condition of issuance of a Certificate of Occupancy for any future use of the subject property shall be a requirement that the primary vehicular entrance to the subject property shall be from Pansy Road, and that the primary vehicular entrance may not be from Aster Road unless and until Aster Road is fully paved and improved, between Holly Road and Pansy Road, as provided in Adelanto Municipal Code Section 17.10.090(a)(1).

I. Control of Odors, Vectors, Trash, and Dust

The parties agree that until composting activities at the Composting Facility cease, Nursery Products and Meberg shall use best efforts to eliminate or minimize offensive odors, vectors, trash, and dust emanating from the site. Specifically, Nursery Products and Meberg agree to refrain from accepting delivery of green waste or of any other materials known to aggravate problems of offensive odors, vectors, trash and dust emanating from the Composting Facility site.

J. Release of City's Claims for Attorney's Fees and Costs

In consideration of the agreements and undertakings set forth herein, City hereby releases Nursery Products and Meberg of and from any and all liability for payment of taxable costs and attorney's fees incurred in defending the lawsuit, pursuant to 42 U.S.C. §1988.

K. Abandonment of Plaintiffs' Right to Appeal from Judgment

In consideration of the agreements and undertakings set forth herein, Nursery Products and Meberg hereby abandon and relinquish any rights they may have to appeal from the judgment entered against them on October 8, 2004.

L. Default

If any party fails to perform any obligation under this Settlement Agreement, the non-defaulting party may institute legal proceedings seeking a decree of specific performance or injunctive relief to enforce the terms of this Settlement Agreement. If an action is brought to enforce or interpret provisions of this Settlement Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

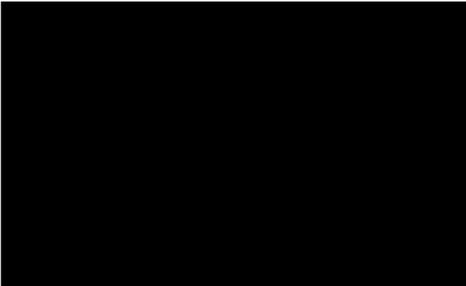
M. Notices

Any notice or communication required under this Settlement Agreement shall be in writing, and shall be delivered personally, by facsimile (with original

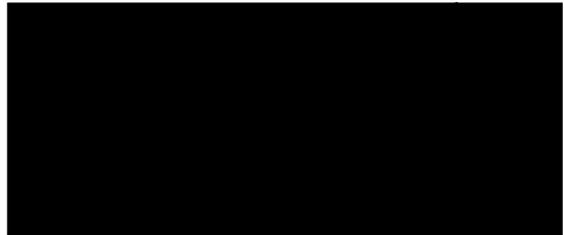
forwarded by United States Mail), or by Federal Express or other similar courier promising overnight delivery. Notice shall be deemed to have been duly given and received: (a) when delivered, if personally delivered to the recipient; (b) when fully transmitted to the recipient's facsimile device, if sent by facsimile during normal business hours, provided such device is capable of generating a written confirmation of such transmission and receipt and provided further that an original is deposited in first-class mail within two business days thereafter; or (c) on the first business day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service. Any party hereto may at any time, by giving three days' written notice to the other party, designate a new address and/or facsimile number for notices and communications pursuant to this Settlement Agreement.

If to the City:

City of Adelanto
Attention: City Manager

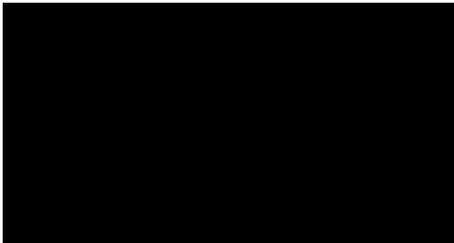


With a copy to:
Marguerite P. Battersby, Esq.
City Attorney
Richards, Watson & Gershon

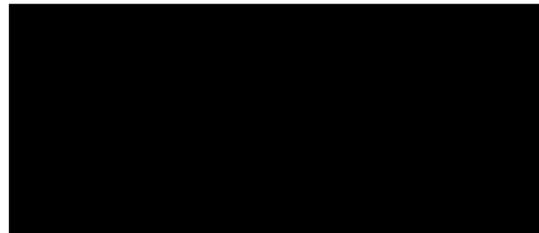


If to Nursery Products:

Nursery Products, LLC



With a copy to:
David G. Hagopian, Esq.
Holdsworth & Hagopian, LLP



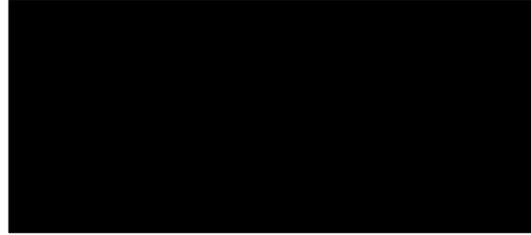
If to Jeff Meberg:

Jeff Meberg



With a copy to:

David G. Hagopian, Esq.
Holdsworth & Hagopian, LLP



N. Warranty of Capacity to Execute Agreement

Each party represents and warrants that the individuals executing this Settlement Agreement on each party's behalf possess full authority to execute this agreement and to settle and compromise all claims settled and compromised by this agreement.

O. Entire Agreement, Amendments, and Successors in Interest

This Settlement Agreement contains the entire agreement of the parties and supersedes any and all prior or contemporaneous understandings, negotiations, representations, promises, and agreements, oral or written, by or between the parties with respect to the matters set forth in this Settlement Agreement. This Settlement Agreement shall not be amended, modified, or otherwise changed except by a writing duly signed by authorized representatives of Nursery Products, Meberg, and the City. This Settlement Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each of the parties.

P. Legal Advice

In entering into this Settlement Agreement, each party has had the opportunity to consult with and rely upon the advice of the attorneys of their own choice. Each party represents and warrants that the terms of this Settlement Agreement have been completely read by and explained to them by their attorneys,

and that those terms are fully understood and voluntarily accepted by them.

Q. Severability

If any portion, provision, or part of this Settlement Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Settlement Agreement, and shall not effect the validity or enforceability of such remaining portions, provisions, or parts.

R. Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

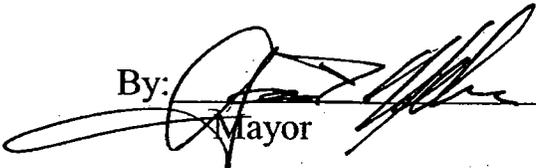
S. Execution of Counterparts

This Settlement Agreement shall become effective upon execution by all parties. This agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall be deemed to constitute one and the same document.

[Agreement continues next page]

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of November 1, 2004.

CITY OF ADELANTO

By: 
Mayor

ATTEST:


City Clerk

NURSERY PRODUCTS, LLC

By: _____
Jeff Meberg
President

By: _____
Secretary

JEFF MEBERG

By: _____
Jeff Meberg

[Signatures continue next page]

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of November 1, 2004.

CITY OF ADELANTO

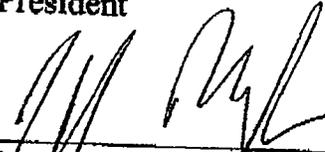
ATTEST:

By: _____
Mayor

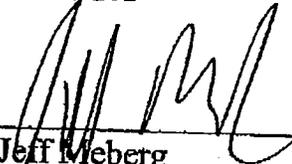
City Clerk

NURSERY PRODUCTS, LLC

By: 
Jeff Meberg
President

By: 
Secretary

JEFF MEBERG

By: 
Jeff Meberg

[Signatures continue next page]

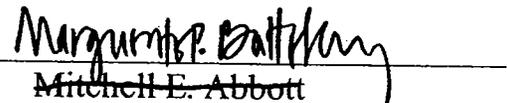
APPROVED AS TO FORM AND CONTENT:

HOLDSWORTH & HAGOPIAN, LLP
DAVID G. HAGOPIAN

By 
David G. Hagopian
Attorneys for Plaintiffs,
Nursery Products, LLC
and Jeff Meberg

MARGUERITE P. BATTERSBY
CITY ATTORNEY
CITY OF ADELANTO

RICHARDS, WATSON & GERSHON
A Professional Corporation
MITCHELL E. ABBOTT
PATRICK K. BOBKO
GINETTA L. GIOVINCO

By 
~~Mitchell E. Abbott~~
Attorneys for Defendant,
City of Adelanto

“EXHIBIT A”

AMENDMENT TO BIO-SOLID WASTE DISPOSAL AGREEMENT

TPS NURSERY PRODUCTS, NURSERY PRODUCTS, LLC, JEFF MEBERG, and the CITY OF ADELANTO hereby amend the “Bio-Solid Waste Disposal Agreement” dated as of June 26, 2001 between TPS NURSERY PRODUCTS and the CITY OF ADELANTO, as follows:

1. All references to TPS Nursery Products in the “Bio-Solid Waste Disposal Agreement” shall be deemed references to Nursery Products, LLC.
2. Paragraph 2 of the “Bio-Solid Waste Disposal Agreement” shall be amended to read: “Commencing November 1, 2004 and continuing for forty-eight (48) years thereafter, TPS Nursery Products or Nursery Products, LLC will accept for processing, process and dispose of Class ‘B’ bio-solids generated by or within the City of Adelanto, not to exceed five thousand (5,000) tons per year without cost to CITY or its residents.”
3. A new Paragraph 17 is added to the “Bio-Solid Waste Disposal Agreement” to read: “It is hereby agreed that this ‘Bio-Solid Waste Disposal Agreement’ and the ‘Amendment to Bio-Solid Waste Disposal Agreement’ shall apply to and be binding upon any corporate or other legal entity in which TPS Nursery Products, Nursery Products, LLC, or Jeff Meberg has an ownership interest, and which is engaged in the composting business in the County of San Bernardino or at a location determined by the City to be within a reasonable distance for delivery of bio-solids generated at the City’s wastewater treatment plant.”

“EXHIBIT A”

In all other respects, the “Bio-Solid Waste Disposal Agreement,” as amended, remains in full force and effect.

Dated: November 1, 2004

ATTEST:

CITY OF ADELANTO

City Clerk

By: 

Mayor

TPS NURSERY PRODUCTS

By: _____
Jeff Meberg

NURSERY PRODUCTS, LLC

By: _____
Jeff Meberg
President

By: _____
Secretary

Jeff Meberg

“EXHIBIT A”

In all other respects, the “Bio-Solid Waste Disposal Agreement,” as amended, remains in full force and effect.

Dated: November 1, 2004

ATTEST:



City Clerk

CITY OF ADELANTO

By: _____
Mayor

TPS NURSERY PRODUCTS

By: _____
Jeff Meberg

NURSERY PRODUCTS, LLC

By: _____
Jeff Meberg
President

By: _____
Secretary

Jeff Meberg

"EXHIBIT A"

In all other respects, the "Bio-Solid Waste Disposal Agreement," as amended, remains in full force and effect.

Dated: November 1, 2004

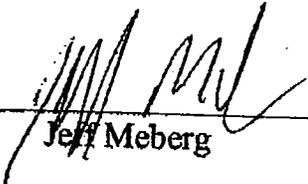
ATTEST:

CITY OF ADELANTO

By: _____
Mayor

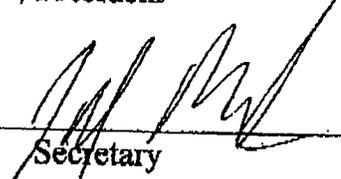
City Clerk

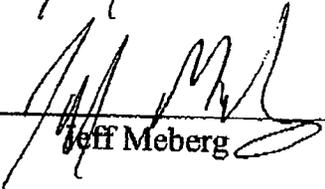
TPS NURSERY PRODUCTS

By: 
Jeff Meberg

NURSERY PRODUCTS, LLC

By: 
Jeff Meberg
President

By: 
Secretary


Jeff Meberg

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

PEOPLE OF THE STATE OF CALIFORNIA;
CITY OF ADELANTO

Case No.

vs.

CERTIFICATE OF ASSIGNMENT

NURSERY PRODUCTS, LLC; JEFFREY P.
MEBERG; CHRISTOPHER M. SENEY; etc.

A civil action or proceeding presented for filing must be accompanied by this certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the VICTORVILLE District of the Superior Court under Rule 404 of this court for the checked reason:

[X] General [] Collection

- Nature of Action Ground
1 Adoption Petitioner resides within the district.
2 Conservator Petitioner or conservatee resides within the district.
3 Contract Performance in the district is expressly provided for.
4 Equity The cause of action arose within the district.
5 Eminent Domain The property is located within the district.
6 Family Law Plaintiff, defendant, petitioner or respondent resides within the district.
7 Guardianship Petitioner or ward resides within the district or has property within the district.
8 Harassment Plaintiff, defendant, petitioner or respondent resides within the district.
9 Mandate The defendant functions wholly within the district.
10 Name Change The petitioner resides within the district.
11 Personal Injury The injury occurred within the district.
12 Personal Property The property is located within the district.
13 Probate Decedent resided or resides within the district or had property within the district.
14 Prohibition The defendant functions wholly within the district.
15 Review The defendant functions wholly within the district.
16 Title to Real Property The property is located within the district.
17 Transferred Action The lower court is located within the district.
18 Unlawful Detainer The property is located within the district.
19 Domestic Violence The petitioner, defendant, plaintiff or respondent resides within the district.
[x] 20 Other Injunction Injunction to Abate a Public Nuisance
21 THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT.

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designated district is:

NURSERY PRODUCTS, LLC. ADDRESS
(NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR)
(CITY) (STATE) (ZIP CODE)

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on

July 8, 2005 at Los Angeles, California

Signature of Attorney/Party
MITCHELL E. ABBOTT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, street number, and address):

MITCHELL E. ABBOTT, ESQ.
RICHARDS, WATSON & GERSHON

FOR COURT USE ONLY

ATTORNEY FOR (Name): Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

STREET ADDRESS: 14455 Civic Drive

MAILING ADDRESS:

CITY AND ZIP CODE: Victorville, CA 92392

BRANCH NAME: VICTORVILLE DISTRICT

CASE NAME: PEOPLE OF THE STATE OF CALIFORNIA v. NURSERY PRODUCTS, LLC, et al.

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)

CASE NUMBER:

JUDGE:

DEPT.:

All five (5) items below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- Auto (22)
- Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
- Product liability (24)
- Medical malpractice (45)
- Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- Business tort/unfair business practice (07)
- Civil rights (08)
- Defamation (13)
- Fraud (16)
- Intellectual property (19)
- Professional negligence (25)
- Other non-PI/PD/WD tort (35)

Employment

- Wrongful termination (36)
- Other employment (15)

Contract

- Breach of contract/warranty (06)
- Collections (09)
- Insurance coverage (18)
- Other contract (37)

Real Property

- Eminent domain/Inverse condemnation (14)
- Wrongful eviction (33)
- Other real property (26)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38)

Judicial Review

- Asset forfeiture (05)
- Petition re: arbitration award (11)
- Writ of mandate (02)
- Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812)

- Antitrust/Trade regulation (03)
- Construction defect (10)
- Mass tort (40)
- Securities litigation (28)
- Environmental/Toxic tort (30)
- Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- Enforcement of judgment (20)

Miscellaneous Civil Complaint

- RICO (27)
- Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- Partnership and corporate governance (21)
- Other petition (not specified above) (43)

2. This case is is not complex under rule 1800 of the California Rules of Court. If case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court
- f. Substantial post-judgment judicial supervision

3. Type of remedies sought (check all that apply):

- a. monetary
- b. nonmonetary; declaratory or injunctive relief
- c. punitive

4. Number of causes of action (specify): Three

5. This case is is not a class action suit.

Date: July 8, 2005

MITCHELL E. ABBOTT, ESQ.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet shall be used for statistical purposes only.

1 MARGUERITE P. BATTERSBY (State Bar No. 115422)
2 CITY ATTORNEY
3 CITY OF ADELANTO

Exempt from Filing Fees
Pursuant to Govt. Code §6103

4 RICHARDS, WATSON & GERSHON
5 A Professional Corporation
6 MITCHELL E. ABBOTT (State Bar No. 64990)
7 T. PETER PIERCE (State Bar No. 160408)
8 GINETTA L. GIOVINCO (State Bar No. 227140)



9 Attorneys for Plaintiffs,
10 *People of the State of California and City of Adelanto*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN BERNARDINO**
13 **VICTORVILLE DIVISION**

14 PEOPLE OF THE STATE OF
15 CALIFORNIA; CITY OF ADELANTO,

16 Plaintiffs,

17 v.

18 NURSERY PRODUCTS, LLC;
19 JEFFREY P. MEBERG;
20 CHRISTOPHER M. SENEY; DOES 1
21 through 20 , inclusive,

22 Defendants.

Case No. VCVVS038427

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM
OF POINTS AND AUTHORITIES
AND DECLARATIONS OF
KEVIN MURPHY, MELVA
DAVIS, DANIEL A. SARMIENTO,
MARIARITA SANTIAGO, ROBIN
BRADSHAW, BRUCE W.
FOWLER, BRENDA KNOX,
GRACE RICE, JOHN L. YOUNG,
AND MITCHELL E. ABBOTT IN
SUPPORT THEREOF**

23 Hearing: August 8, 2005
24 Time: 8:30 a.m.
25 Dept.: V10

[Hon. Stanford Reichert,
Judge of the Superior Court]

26 Complaint Filed: July 8, 2005

1 This motion is based upon this notice and upon the attached memorandum
2 of points and authorities, supporting exhibits and declarations; upon all the
3 pleadings, papers, and records on file in this action, upon any matters as to which
4 the Court may take mandatory or permissive judicial notice, and upon the
5 argument of counsel and such other and further evidence as the Court may receive
6 at the time of the hearing on the motion.

7 **WHEREFORE** plaintiffs, the People of the State of California and the City
8 of Adelanto, pray that the motion for preliminary injunction be granted.

9
10 DATED: July 8, 2005

MARGUERITE P. BATTERSBY
CITY ATTORNEY
CITY OF ADELANTO

11
12 RICHARDS, WATSON & GERSHON
13 A Professional Corporation
14 MITCHELL E. ABBOTT
15 T. PETER PIERCE
16 GINETTA L. GIOVINCO

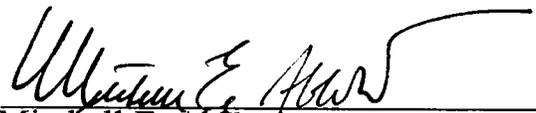
17 By: 
18 Mitchell E. Abbott
19 Attorneys for Plaintiffs,
20 *People of the State of California and*
21 *City of Adelanto*

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*Notice of Motion and Motion for Preliminary Injunction, Memorandum of Points and Authorities, and Declarations

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I.**

4 **INTRODUCTION**

5 Plaintiffs, the People of the State of California and the City of Adelanto,
6 seek a preliminary injunction prohibiting defendants, Nursery Products, LLC,
7 Jeffrey P. Meberg, and Christopher M. Seney (hereinafter collectively referred to
8 as “defendants”), from receiving and processing treated human sewage sludge,
9 lawn clippings and other so-called “green waste,” and other organic materials at
10 their composting facility in the City. As the numerous attached declarations from
11 area residents attest, the composting process generates a foul stench permeating
12 the community, and generates thousands of flies plaguing homes, schools, and
13 automobiles. Only an injunction can remedy the daily harms inflicted by the
14 composting facility upon the surrounding residents and businesses.

15 This is not the first time the parties have gone to court. An earlier federal
16 court civil rights action resulted in a summary judgment in favor of the City of
17 Adelanto. (*Nursery Products, LLC v. City of Adelanto*, U.S.D.C., C.D. Cal.
18 Docket No. SACV 03-1622-GLT (ANx)). A subsequent appeal by Nursery
19 Products to the Ninth Circuit was abandoned when the parties entered into a
20 Settlement Agreement, a true and correct copy of which is attached here as Exhibit
21 “A”. (Declaration of Mitchell E. Abbott at ¶ 2).

22 The Settlement Agreement sets forth the background facts relating to the
23 disputes between the City and Nursery Products, and the City will refer to it in this
24 introductory statement of facts. Nursery Products, LLC owns and operates a
25 composting facility located at 16284 Aster Road in the City of Adelanto. (Ex. A,
26 p. 1, ¶ II.A). The facility consists of approximately 40 acres of flat, graded land, a
27 trailer with offices, and various pieces of earth-moving equipment. (Ex. A, p. 1, ¶
28 II.A). The facility receives and processes both “green-waste” (grass clippings,

1 wood chips, and similar materials) and “bio-solids” (treated domestic sewage
2 sludge). (Ex. A, p. 1, ¶ II.A). The materials are mixed and treated with a chemical
3 enzyme, and then piled in 10-foot high windrows in the open air. After
4 approximately 60 days of processing at the facility, the finished compost product
5 is sold as agricultural fertilizer. (Ex. A, p. 1, ¶ II.A).

6 Composting operations on the subject property began in early 2003. Later
7 that same year, Nursery Products applied to the California Integrated Waste
8 Management Board (“CIWMB”) for an expanded solid waste facilities permit that
9 would allow it to increase by nearly 700 percent the amount of material composted
10 annually. (Ex. A, pp. 1-2, ¶ II.C). The City expressed concerns to the CIWMB
11 about expanding the capacity of the facility, and about the impact of an expanded
12 operation on the community. (Ex. A, pp. 1-2, ¶ II.C). The City’s exercise of its
13 rights in expressing its concerns to CIWMB triggered the filing of the federal
14 court civil rights action by Nursery Products, described above.

15 The Settlement Agreement contains the following two provisions relating to
16 the shut-down of the Nursery Products facility:

17 “1. Nursery Products and Meberg shall, on or before July 1,
18 2005, cease and desist from receiving and processing green waste,
19 bio-solids, or any other organic material for composting at the
20 Composting Facility located at 16284 Aster Road in the City of
21 Adelanto.

22 “2. Nursery Products and Meberg shall, on or before
23 September 1, 2005, permanently cease and desist from conducting
24 composting activities at 16284 Aster Road in the City of Adelanto.”

25 (Ex. A, p. 3, ¶¶ III.A.1 & 2).

26 As appears more particularly from the attached declaration of Kevin
27 Murphy, Code Enforcement Officer for the City of Adelanto, trucks have been
28 observed delivering (and dumping) sewage sludge and other organic material at

1 the Nursery Products facility *after* the July 1, 2005 cut-off date. Indeed, on July 5,
 2 2005, defendant Christopher M. Seney, general manager of the composting
 3 operation, told the City's Code Enforcement Officer, Kevin Murphy, that Nursery
 4 Products *planned to continue to engage in business as usual and did not plan to*
 5 *stop receiving shipments*, as required by the Settlement Agreement. (Declaration
 6 of Kevin Murphy, ¶8). Significantly, just two weeks ago, Nursery Products
 7 represented to the City in writing on June 21, 2005 that it would stop receiving
 8 waste and bio-solids on July 1, 2005. (Ex. B; Declaration of Mitchell E. Abbott at
 9 ¶ 3).

10 Given defendants' continued acceptance of shipments of sewage sludge, in
 11 direct violation of the express terms of the Settlement Agreement and in the face
 12 of written assurance to the contrary, there is no reason to believe that defendants
 13 will voluntarily comply with *any* of the terms of the Settlement Agreement. The
 14 City thus seeks a preliminary injunction requiring defendants to cease accepting
 15 shipments of biosolids and other organic materials immediately, and to cease all
 16 composting activities and operations as of September 1, 2005.

17 As discussed more fully below, the courts evaluate two factors in deciding
 18 whether to issue a preliminary injunction: (1) the likelihood that the plaintiffs
 19 ultimately will prevail on the merits of their complaint, and (2) the comparative
 20 consequences to the parties of issuing or not issuing the injunction.

21 The numerous declarations from local residents attached hereto demonstrate
 22 incontrovertably that the Nursery Products composting facility constitutes a public
 23 nuisance, and there is thus a strong likelihood that the City will prevail on the
 24 merits of its public nuisance claim. The declarations show that the composting
 25 facility is a public nuisance as defined in Civil Code section 3480. The pervasive
 26 and noxious odor emanating from the facility is the paradigmatic public nuisance.
 27 The thousands of flies attracted by the composting operations and then inflicted on
 28 the surrounding community are a separate and aggravating aspect of the nuisance.

1 Turning to the breach of contract claim, the declaration of Kevin Murphy
2 demonstrates conclusively that defendants Nursery Products and Meberg have
3 breached the terms of the Settlement Agreement by continuing to accept shipments
4 of bio-solids and other organic waste after the July 1, 2005 shut-off date.

5 The comparative consequences to the parties of granting or denying the
6 injunction – some courts refer to this factor as the “balancing of harms” – weighs
7 heavily in favor of granting the injunction. The harm to the City of not granting
8 the injunction is the continued stench and attendant flies that are being inflicted on
9 the surrounding community. Bluntly stated, the foul odors and swarms of flies
10 originating at the composting facility are directly and materially interfering with
11 the lives of City residents. People cannot enjoy barbecues with their families or
12 other outdoor activities at their homes. Children cannot participate in athletic
13 activities at public parks when the wind is blowing the wrong way. Thousands of
14 flies congregate on the screens and walls of homes and schools – people must race
15 through doors to keep the flies from coming inside. Local elementary school
16 children have complained of nausea, vomiting, eye irritation, and difficulty
17 breathing when odors from the composting facility are particularly intense.
18 Furthermore, if a preliminary injunction is not granted, the City (and its residents)
19 will completely lose the benefit of the bargain it struck in the Settlement
20 Agreement as defendants continue their composting operation with impunity.

21 In sharp contrast, defendants will suffer no harm if the court grants the
22 injunction. An injunction would require defendants to do nothing more than what
23 they have *already agreed* to do – cease receiving and processing composting
24 materials forthwith and then stop composting operations altogether on September
25 1, 2005.

26 For all of these reasons, the Court should issue a preliminary injunction as
27 requested.

28 ///

1 II.

2 **PLAINTIFFS ARE ENTITLED TO A PRELIMINARY**
3 **INJUNCTION REQUIRING DEFENDANTS TO STOP**
4 **RECEIVING AND PROCESSING COMPOSTING**
5 **MATERIALS.**

6
7 The California Supreme Court has articulated the trial court’s task in
8 evaluating a request for preliminary injunction as follows:

9 “In deciding whether to issue a preliminary injunction, a trial court
10 must evaluate two interrelated factors: (i) the likelihood that the party
11 seeking the injunction will ultimately prevail on the merits of his
12 claim, and (ii) the balance of harm presented, i.e., the comparative
13 consequences of the issuance and nonissuance of the injunction.”

14 *Common Cause of California v. Bd. of Supervisors of Los Angeles County*, 49
15 Cal.3d 432, 441-442 (1989).

16 The Court evaluates the two factors on a sliding scale, such that “if the party
17 seeking the injunction can make a sufficiently strong showing of likelihood of
18 success on the merits, the trial court has discretion to issue the injunction
19 notwithstanding that party’s inability to show that the balance of harms tips in his
20 favor.” 49 Cal.3d 432, 447. *See also King v. Meese*, 43 Cal.3d 1217, 1227 (1987)
21 (“the more likely it is that plaintiffs will ultimately prevail, the less severe must be
22 the harm that they allege will occur if the injunction does not issue”).

23
24 **A. Plaintiffs Are Likely to Prevail on the Merits of Their Claims.**

25
26 *1. The Evidence Demonstrates That The Continued Processing Of*
27 *Materials For Composting Constitutes A Public Nuisance.*

28 Civil Code Section 3480 defines a public nuisance as follows:

1 “A public nuisance is one which affects at the same time an entire
2 community or neighborhood, or any considerable number of persons,
3 although the extent of the annoyance or damage inflicted upon
4 individuals may be unequal.”

5 Civil Code § 3480.

6 The composting facility at issue here has had a severe and negative impact
7 upon a large number of people who live or work in the City of Adelanto. There is
8 no question that a foul stench emanates from the composting facility. (See
9 declarations of Kevin Murphy [¶ 3]; Melva Davis [¶ 8]; Mariarita Santiago [¶ 5];
10 and John L. Young [¶ 3]). The stench permeates local schoolyards, many
11 residences, businesses, and recreational facilities to the extent it becomes
12 intolerable to stay outdoors (See declarations of Melva Davis [¶¶ 5-8]; Daniel A.
13 Sarmiento [¶¶ 2, 3, 5]; Mariarita Santiago [¶¶ 2-5, 11]; Robin Bradshaw [¶¶ 2, 3];
14 Bruce W. Fowler [¶ 3]; Brenda Knox [¶ 2]; Grace Rice [¶¶ 2, 3]; and John L.
15 Young [¶¶ 2, 5]). At times, the stench is so strong that it causes illness, including
16 vomiting. (See declarations of Melva Davis [¶¶ 5, 6, 8]; Daniel A. Sarmiento [¶
17 3]; Mariarita Santiago [¶ 10]; Brenda Knox [¶ 2]; and Grace Rice [¶ 3]).

18 The composting facility has also generated or attracted thousands of flies
19 that have become a nuisance to children at school and on school buses, to
20 residents in their homes, and to employees at their places of business. (See
21 declarations of Melva Davis [¶¶ 3,4]; Daniel A. Sarmiento [¶ 4]; Mariarita
22 Santiago [¶¶ 7-9]; Bruce W. Fowler [¶ 2]; Brenda Knox [¶ 2]; Grace Rice [¶ 4];
23 and John L. Young [¶ 4]).

24 The widespread foul stench and the accompanying flies are paradigmatic
25 public nuisances. As shown by the numerous attached declarations, the stench and
26 flies interfere with the public health, comfort and convenience. See *Venuto v.*
27 *Owens-Corning Fiberglass Corp.*, 22 Cal.App.3d 116, 123 (1971) (a “public
28 nuisance’ comprehends an act . . . which interferes with the interests of the

1 community or the comfort and convenience of the general public and includes
 2 interference with the public health, comfort and convenience.”) Conditions
 3 similar to the stench and flies here historically have been declared by courts to
 4 constitute public nuisances. *See Varjabedian v. City of Madera*, 20 Cal.3d 285,
 5 289-91 (1977) (neighboring homeowners allowed to sue for public nuisance
 6 caused by foul odors emanating from sewage treatment plant); *Markey v. Danville*
 7 *Warehouse & Lumber, Inc.*, 119 Cal.App.2d 1 (1953) (cement mixing plant that
 8 produced excessive dirt and grit, and generated loud noises, was public nuisance);
 9 *Dean v. Powell Undertaking Co.*, 55 Cal.App. 545 (1921) (funeral parlors
 10 generating foul and noxious odors constituted public nuisance).

11 Public nuisances may be abated pursuant to legal action brought by a city
 12 attorney in the name of the people of the State of California under Code of Civil
 13 Procedure Section 731. Well-settled authority establishes that an injunction is an
 14 appropriate remedy to abate a public nuisance. *See, e.g., City and County of San*
 15 *Francisco v. Padilla*, 23 Cal.App.3d 388, 401 (1972) (public nuisance “may be
 16 enjoined by an action for injunction”); *City of Los Angeles v. Silver*, 98
 17 Cal.App.3d 745, 750 (1979) (“public nuisance [is] subject to abatement by
 18 injunction”).

19 Based upon the evidence contained in the declarations before the court,
 20 plaintiffs respectfully submit that the composting facility is a public nuisance and
 21 there is a strong likelihood that plaintiffs will prevail on their first cause of action
 22 for unlawful maintenance of a public nuisance. The court may issue a preliminary
 23 injunction on this basis alone. *See Common Cause of California v. Bd. of*
 24 *Supervisors of Los Angeles County*, 49 Cal.3d 432, 447 (1989) (“if the party
 25 seeking the injunction can make a sufficiently strong showing of likelihood of
 26 success on the merits, the trial court has discretion to issue the injunction
 27 notwithstanding that party’s inability to show that the balance of harms tips in his
 28 favor”).

1 In *Smith v. Mendonsa*, 108 Cal.App.2d 540 (1952), plaintiff and defendants
 2 owned adjacent real property. They entered into a written agreement in which
 3 defendants promised not to maintain on their property any trees exceeding 15 feet
 4 in height. Defendants breached the agreement and the trial court issued an
 5 injunction to enforce it. On appeal, defendants attacked the injunction, arguing
 6 that the balance of hardships tipped in favor of denying injunctive relief (108
 7 Cal.App.2d 540, 543.) The Court of Appeal rejected this argument and affirmed
 8 the injunction. The appellate court expressly held that injunctive relief is
 9 appropriate to prevent the breach of a contract:

10 “We think that the trial court acted within its discretion in granting
 11 injunctive relief. These factors impel to that conclusion: The contract
 12 itself is very clear; the promise made is definite; the purpose is
 13 declared to be the prevention of the very damage which ensued when
 14 that promise was broken . . . It is not the business of courts, either of
 15 law or of equity, to remake contracts fairly entered into by persons
 16 who are capable of contracting. On the contrary, it is the duty of
 17 courts to encourage the keeping of agreements so made and to give
 18 adequate remedy for the breach thereof when it occurs. This is
 19 particularly true where the breach is deliberate and the wrong wilful.”

20 *Smith v. Mendonsa*, 108 Cal.App.2d 540, 544 (1952).

21 Defendants Nursery Products and Jeff Meberg promised to stop receiving
 22 and processing bio-solids and other organic matter for composting on or before
 23 July 1, 2005. Defendants have failed to keep their promise, and they continue to
 24 violate the terms of the Settlement Agreement (*See Declaration of Kevin Murphy*
 25 *at ¶ 8*). Indeed, the General Manager of the Nursery Products facility, Christopher
 26 Seney, has flatly proclaimed his and his company’s intention to continue receiving
 27 bio-solids and processing them *indefinitely*. (*See Declaration of Kevin Murphy at*
 28 *¶9*). This Court should issue a preliminary injunction that *immediately* prohibits

1 defendants from receiving and processing further shipments of bio-solids and
2 other organic material.

3 Defendants may seek to resist a preliminary injunction by relying on Code
4 of Civil Procedure Section 526(b)(5), which provides that an injunction cannot be
5 granted to “prevent the breach of a contract the performance of which would not
6 be specifically enforced.” There is no reason in law or logic why the Settlement
7 Agreement here “would not be specifically enforced.” Settlement agreements are
8 routinely enforced by the courts. *See, e.g., Weddington Productions, Inc. v.*
9 *Flick*, 60 Cal.App.4th 793 (1998); *Corkland v. Boscoe*, 156 Cal.App.3d 989, 992
10 (1984). This is particularly so here, where the specific performance sought is
11 simply a prohibition on carrying on a certain business activity. The limitation on
12 injunctive relief in Section 526(b)(5) simply does not apply here.

13 Plaintiffs respectfully submit that defendants’ breach of the Settlement
14 Agreement provides a separate and independent ground for this Court to issue a
15 preliminary injunction requiring defendants Nursery Products and Meberg
16 forthwith to cease receiving and processing shipments of bio-solids and other
17 organic material for composting at the Adelanto site.

18
19 **B. The Balance Of Hardships To The Parties Strongly Favors**
20 **Granting The Injunction.**

21
22 As noted above, the second part of the test for whether to issue a
23 preliminary injunction is to balance the hardship to the plaintiff of not granting the
24 requested injunction against the hardship to the defendants of granting the
25 injunction. *Common Cause of California v. Bd. of Supervisors of Los Angeles*
26 *County*, 49 Cal.3d 432, 441-42 (1989).

27 ///

28 ///

1 sought here will do nothing more than prohibit defendants from taking actions
2 which they have already agreed in writing not to take, defendants certainly can
3 claim no harm if the injunction is granted.

4 In summary, plaintiffs will suffer far greater harm if a preliminary
5 injunction does not issue than defendants will suffer if the court issues a
6 preliminary injunction. That relative harm, together with plaintiffs' strong
7 likelihood of succeeding on the merits on both their first and second causes of
8 action, presents a compelling case for this Court to grant a preliminary injunction
9 requiring defendants immediately to stop receiving and processing composting
10 materials.

11
12 **III.**

13 **PLAINTIFFS ARE ALSO ENTITLED TO AN INJUNCTION**
14 **REQUIRING DEFENDANTS TO CEASE OPERATIONS**
15 **ALTOGETHER ON OR BEFORE SEPTEMBER 1, 2005.**
16

17 The requirements of the Settlement Agreement are plain and unambiguous.
18 There has been no suggestion that defendants did not understand their obligations.
19 Indeed, just two weeks ago, Nursery Products stated, in writing, that it "intends to
20 stop receiving waste and bio-solids at the Adelanto site on July 1, 2005 and will
21 stop composting materials there on September 1, 2005." (Exhibit B).

22 The evidence, however, shows that defendants do not keep their promises.
23 Accordingly, neither plaintiffs nor this Court should have any confidence
24 that defendants will voluntarily cease *all* of their composting operations on or
25 before September 1, 2005. The preliminary injunction should also require
26 defendants to comply with the term of the Settlement Agreement mandating that
27 they permanently cease and desist from conducting composting activities at their
28 Adelanto facility on or before September 1, 2005.

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IV.
CONCLUSION

For all of the foregoing reasons, the Court should issue a preliminary injunction enjoining and restraining defendants, during the pendency of this action, from:

1. Receiving and processing green waste, bio-solids, or any other organic material for composting at the real property located at 16284 Aster Road in the City of Adelanto; and
2. Operating a composting facility at the subject property on or after September 1, 2005.

DATED: July 8, 2005

Respectfully submitted,

MARGUERITE P. BATTERSBY
CITY ATTORNEY
CITY OF ADELANTO

RICHARDS, WATSON & GERSHON
A Professional Corporation
MITCHELL E. ABBOTT
T. PETER PIERCE
GINETTA L. GIOVINCO

By: 

Mitchell E. Abbott
Attorneys for Plaintiffs,
*People of the State of California
and City of Adelanto*

1 filed a civil rights action against the City of Adelanto in federal court. *Nursery*
2 *Products, LLC v. City of Adelanto*, U.S.D.C., C.D. Cal. Docket No. SACV 03-
3 1622-GLT (ANx). After extensive depositions, document inspections, and other
4 pre-trial activity, the City moved for summary judgment on August 31, 2005; the
5 motion was granted by District Judge Gary L. Taylor on September 21, 2005, and
6 judgment was entered by the court on October 8, 2005.

7 6. Nursery Products filed a notice of appeal from this judgment. While
8 the appeal was pending before the Ninth Circuit Court of Appeals, the City and
9 Nursery Products entered into a Settlement Agreement which basically provided
10 that Nursery Products would cease composting operations at the subject property.
11 A true and correct copy of the signed Settlement Agreement is attached hereto as
12 Exhibit A and incorporated herein by this reference.

13 7. On June 21, 2005, the attorney for Nursery Products, David G.
14 Hagopian, Esq., assured the City Attorney, in writing, that Nursery Products
15 would abide by the Settlement Agreement and would stop receiving waste and
16 bio-solids at the Adelanto facility on July 1, 2005. A true and correct copy of Mr.
17 Hagopian's June 21, 2005, letter is attached hereto as Exhibit B and incorporated
18 herein by this reference.

19 8. I visited the Nursery Products site on Tuesday, July 5, 2005 and
20 observed operations from the public right-of-way adjacent to the facility.
21 Notwithstanding the Settlement Agreement and Mr. Hagopian's assurances, at
22 11:16 a.m., I observed three semi-trucks and trailers hauling sewage sludge drive
23 onto the Nursery Products property and unloading their cargo. After the sludge
24 was dumped, the semi-trucks and trailers drove out of the facility. I then observed
25 a loader "mixing" the sludge with other material. I have observed this process
26 many times in the past.

27 9. After observing the trucks make their deliveries on July 5, I went onto
28 the Nursery Products site and spoke to defendant, Chris Seney, known to me to be

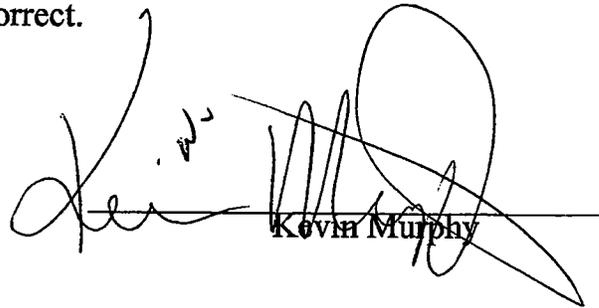
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the general manager of the composting facility. I asked Mr. Seney if Nursery Products was still accepting shipments of bio-solids. Mr. Seney told me, “we are operating like we always have, no change.” Referring to Nursery Products’ President, Jeff Meberg, Mr. Seney then said, “Unless Jeff tells me otherwise” Nursery Products will continue accepting shipments of bio-solids.

10. Based upon my observations on July 5, 2005, there has been no change in the operation of the Nursery Products composting facility.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 7th, 2005.



Kevin Murphy

1 **DECLARATION OF MELVA DAVIS**

2
3 I, Melva Davis, hereby declare:

4 1. I was the Principal of Bradach Elementary School, located at 15550
5 Bellflower Street in the City of Adelanto, from 2001 until June 30, 2004. The
6 Bradach School had an enrollment of approximately 950 students from pre-school
7 through the eighth grade. From July 1, 2004 until the present I have been the
8 Principal of Adelanto School, with an enrollment of approximately 600 students
9 from kindergarten through the fifth grade. I have personal knowledge of the
10 matters and facts set forth herein and, if called as a witness, could and would
11 testify competently thereto.

12 2. The Bradach School is located about two miles southeast of the
13 Nursery Products composting facility at 16284 Aster Road.

14 3. In about the Spring of 2003, we began to notice on Monday mornings
15 after returning to Bradach School from the weekend, a black mass of thousands of
16 flies covering the exterior doors and windows of the school. The custodial staff
17 would try to get rid of the flies by using spray bottles of Windex. We could not
18 use chemical insect repellents because of the children.

19 4. The massive influx of flies required us to leave all doors closed and
20 food covered in the cafeteria so that the food would remain edible for the children.

21 5. Also in about the Spring of 2003, I began to notice a foul stench
22 wafting over the Bradach School. The stench was present on a daily basis until I
23 left the school on June 30, 2004, although some days were worse than others. On
24 some days, the stench was so foul that students playing outside complained of
25 stomach aches and headaches, and experienced vomiting. On those days, the
26 children were not able to do any kind of exercise outdoors.

27 6. School staff members also complained of experiencing the same
28 symptoms while supervising the children during outdoor recess.

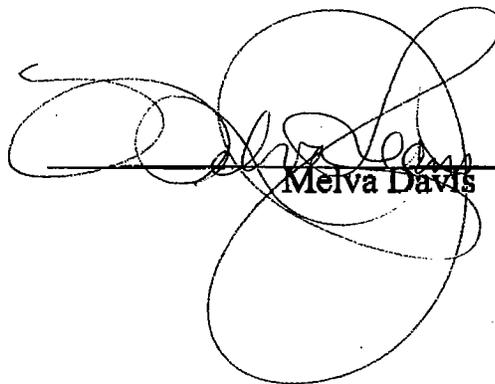
1 7. After I left Bradach School and become Principal at Adelanto School
2 on July 1, 2004, I continued to notice the stench on a daily basis while at the
3 school. The stench persists until this day. The Adelanto School is approximately
4 one and a quarter to one and one-half miles from the Nursery Products facility.

5 8. I came to the conclusion that the foul odor was coming from the
6 Nursery Products facility after I took a car ride in the Spring of 2003 and
7 discovered that the odor became more and more intense the closer I got to the
8 Nursery Products facility. The odor was so strong when the car approached the
9 facility that I vomited.

10 I declare under penalty of perjury under the laws of the State of California
11 that the foregoing is true and correct.

12 Executed on June 30, 2005.

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Melva Davis

DECLARATION OF DANIEL A. SARMIENTO

I, Daniel A. Sarmiento, hereby declare:

1. I am and at all times since 1993 have been a resident of the City of Adelanto. My home address is 17853 Stevens Street. I have personal knowledge of the matters and facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. My home is located approximately two miles from the Nursery Products composting facility at 16284 Aster Road. Since the Nursery Products facility began operating in 2003, my family and I have experienced extremely bad odors coming from the composting facility. Sometimes the foul odors start as early as 3:00 a.m. or 4:00 a.m. in the morning, and they are so bad that we must shut the windows in our home. The odors increase again in the late afternoon and evenings, and make it impossible to enjoy barbecues or other outside activities at our home.

3. My son, Daniel, is 12 years of age and participates in the Azteca Soccer Club, a youth soccer organization that practices at Richardson Park, near Adelanto City Hall. Since the composting facility began operations, my son has complained of burning eyes, difficulty breathing, and nausea from the odors in the air. Both my wife, Laura, and my son, Daniel, have experienced significantly increased problems with allergies which we attribute to the odors and air pollution caused by Nursery Products.

4. The Nursery Products facility has also caused a huge amount of flies which make it very unpleasant to go outside. The flies have been so thick that the screen doors at our home are "jet black." At one point, the flies and odors coming from the composting facility seemed to have reduced somewhat, but for the past month or so, these problems have been as bad as they ever were.

5. The Nursery Products facility has been a problem for our family since

1 it opened. The odors and flies coming from the composting facility are just
2 intolerable. My daughter, Ileana, 14 years of age, does not want to go outside of
3 our home because of "the smell" from Nursery Products.

4 I declare under penalty of perjury under the laws of the State of California
5 that the foregoing is true and correct.

6 Executed on June 30, 2005.

7
8 
9 Daniel A. Sarmiento

1 the door so the flies would not follow us inside. Unfortunately, we were not able
2 to prevent all of the flies from entering, and many flies came into the house and we
3 spent hours chasing them down and killing them. We would try to trap the flies
4 between the windows and window screens so that we could minimize the use of
5 insect spray within the house.

6 8. Often, during my bus runs to and from schools, many flies would
7 enter the bus through the windows and some of the children were bothered by the
8 presence of the flies.

9 9. After the flies began swarming at our house, I noticed they would
10 land on the food we left outside for our dog. Our dog stopped eating the food and
11 became very thin and sick. In addition, the flies would bite our dog. He died in
12 October 2003.

13 10. When the odor is particularly strong, my sinuses flare up making it
14 difficult to breathe through my nose. At times, the flare-up persists for two to
15 three days. Also, the strong odor has given me severe headaches that I never
16 experienced before the composting facility began operating. Sometimes, the
17 headaches last for an entire day.

18 11. Overall, the stench has forced us to stay at home more when we used
19 to participate in more recreational activities outside the house.

20 I declare under penalty of perjury under the laws of the State of California
21 that the foregoing is true and correct.

22 Executed on June 30, 2005.

23
24 
25 Mariarita Santiago
26
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DECLARATION OF ROBIN BRADSHAW

I, Robin Bradshaw, hereby declare:

1. I am and at all times since November 2000, have been Safety Director for CABO Yachts, Inc., a manufacturer of recreational fiberglass yachts located at 9780 Rancho Road in the City of Adelanto. I have personal knowledge of the matters and facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. CABO Yachts, Inc., conducts its manufacturing operations in six large buildings on a 10-acre campus, which is located approximately 1.5 miles from the Nursery Products composting facility at 16284 Aster Road. My job as Safety Director includes compliance with air and water permits, worker safety programs and procedures, and overall responsibility for facility maintenance. The Nursery Products composting facility has been a public nuisance due to extremely strong and unpleasant odors. The odors seem to be strongest in the early mornings and late afternoons, and on occasions when the wind blows from the southeast.

3. CABO Yachts, Inc., employs 530 people at the Adelanto plant. I have had many complaints from our workers regarding the odors from Nursery Products, which are sometimes extremely strong. I have had a number of conversations with the management of CABO Yachts, Inc., regarding the nuisance problems caused by Nursery Products' composting operation. In light of my experience and that of my company, it appears to me that because of the odors associated with the operation, and because of the close proximity of large numbers of workers and residents, this is a very unsuitable location for a composting facility.

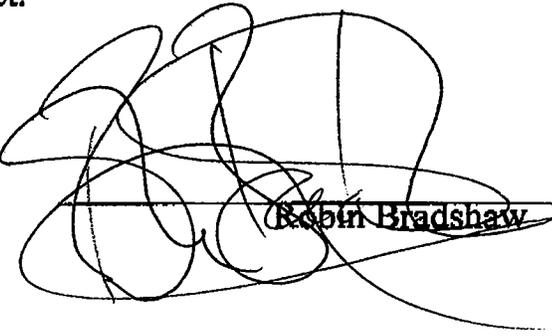
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1 I declare under penalty of perjury under the laws of the State of California
2 that the foregoing is true and correct.

3 Executed on June 30, 2005.

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DECLARATION OF BRENDA KNOX

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I, Brenda Knox, hereby declare:

1. I am and at all times since 2001 have been a resident of the City of Adelanto. My home address is 18287 Cherimoya Road. I have personal knowledge of the matters and facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. My home is located approximately three miles from the Nursery Products composting facility at 16284 Aster Road. Since the composting operations began, there have been extremely bad odors early in the morning and in the evenings, especially when the weather is warm. There certainly was no odor before Nursery Products began operating in 2003. There has also been a huge number of flies and large amounts of dust. I cannot sit outside in the evenings at my home because of the odors and flies. I no longer hang laundry out to dry because of the dust in the air. These problems did not exist before the composting operation began. The odors and the dust have aggravated my asthma and breathing difficulties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 30, 2005.


Brenda Knox

DECLARATION OF GRACE RICE

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I, Grace Rice, hereby declare:

1. I am and at all times since 1994 have been a resident of the City of Adelanto. My home address is 17919 Juniper Street, and I live with my husband. I have personal knowledge of the matters and facts set forth herein and, if called as a witness, could and would testify competently thereto.

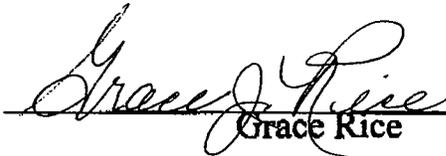
2. My home is located approximately 2.5 miles from the Nursery Products composting facility at 16284 Aster Road.

3. About two years ago, I started to notice a foul stench at my house. I have noticed the stench a few days a week for the last couple of years. Some days are worse than others. On the worst days, we cannot open our windows. On several occasions, the odor has been so foul that I got sick to my stomach. Before the odor began about two years ago, we frequently kept the windows in our house open.

4. About two years ago, I started to notice many flies around the outside of my house. I have noticed the flies daily since then and some days there are more flies than others. At times, some of them have gotten inside the house where my husband and I try to kill them.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 30, 2005.



Grace Rice

DECLARATION OF JOHN L. YOUNG

I, John L. Young, hereby declare:

1. I am and at all times since 1982 have been a resident of the City of Adelanto. My home address is 11281 Holly Road. I have personal knowledge of the matters and facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. My home is located approximately one mile from the Nursery Products composting facility at 16284 Aster Road.

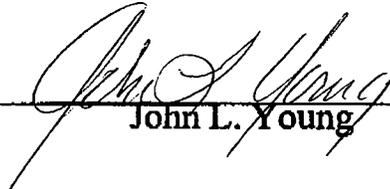
3. In early 2003, I was driving a tractor and noticed grading, and a lot of material being dumped at the Nursery Products facility. I noticed a foul stench coming from the facility.

4. Since early 2003, I have had problems with flies at my house. The flies are present every day, some worse than others. On some days, I have seen hundreds of flies at my house and if I open the door they will enter my home.

5. Three or four times a week for the last couple of years I have experienced a foul stench at my house when I am outside. This is the same stench I smelled in early 2003 when I passed by the Nursery Products facility. I keep the windows closed so the smell does not waft inside.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 30, 2005.



John L. Young

SETTLEMENT AGREEMENT

I. PARTIES

The parties to this agreement are Nursery Products, LLC, a California limited liability company (“Nursery Products”), Jeff Meberg (“Meberg”), and the City of Adelanto (“City”).

II. RECITALS

A. The Composting Facility

Nursery Products owns and operates a composting facility (“Composting Facility”) located at 16284 Aster Road, in the City of Adelanto. This Composting Facility consists of approximately 40 acres of graded land, a trailer with offices, and various pieces of equipment. The Composting Facility receives and processes both “green waste” (grass clippings, wood chips, and similar materials) and bio-solids (treated sewage). After approximately 60 days of processing at the Composting Facility, the finished material is sold as agricultural fertilizer.

B. The Existing Bio-Solids Agreement

Prior to commencing operations of the Composting Facility, Nursery Products and the City entered into an agreement under which Nursery Products agreed to accept for processing, process, and dispose of up to five thousand (5,000) tons per year of Class “B” bio-solids generated at the City’s wastewater treatment plant, without cost to the City or its residents, for a period of fifty (50) years. Under the agreement the City is responsible for transporting bio-solids to the Composting Facility, and for paying the costs of transport.

C. The Application for an Expanded Permit

In 2003, Nursery Products applied to the California Integrated Waste Management Board (“CIWMB”) for an expanded solid waste facilities permit that

would allow it to increase the amount of material composed annually by nearly 700%. The City expressed concerns to the CIWMB about expanding the capacity of the Composting Facility. The CIWMB has taken no action on the application for the expanded permit.

D. The Lawsuit

On November 17, 2003, Nursery Products and Meberg filed a lawsuit against the City in the United States District Court, Central District of California (Docket number SACV 03-1622-GLT (ANx)). The lawsuit alleged, in substance, that the City had violated the plaintiffs' due process rights, had impermissibly interfered with Nursery Products' business, and had caused harm to Nursery Products' and Meberg's reputations. Summary judgment in favor of the City was entered by the Court on October 8, 2004.

E. Attorney's Fees Motion

The City has advised Nursery Products and Meberg of the City's intention to bring a motion for an award of its reasonable attorney's fees incurred in defending the lawsuit, pursuant to 42 U.S.C. §1988. Nursery Products and Meberg dispute the City's entitlement to recover its attorney's fees. Additionally, the City on October 21, 2004, filed an application for an order taxing costs against Nursery Products and Meberg.

F. Settlement

The parties desire to avoid the risk and expense of further litigation and appeals, and desire fully and finally to resolve any and all claims by the City against Nursery Products and Meberg for the recovery of attorney's fees and costs, and to achieve certainty regarding the future operation of the Composting Facility and the disposal of sewage sludge generated at the City's wastewater treatment plant.

III. AGREEMENT

The parties agree as follows:

A. Cessation of Operations at and Relocation of the Composting Facility

1. Nursery Products and Meberg shall, on or before July 1, 2005, cease and desist from receiving and processing green waste, bio-solids, or any other organic material for composting at the Composting Facility located at 16284 Aster Road in the City of Adelanto.

2. Nursery Products and Meberg shall, on or before September 1, 2005, permanently cease and desist from conducting composting activities at 16284 Aster Road in the City of Adelanto.

3. Nursery Products and Meberg shall, on or before September 1, 2005, remove all green waste, bio-solids, or other composting material, including all finished compost material and related equipment, from the Composting Facility and shall clean and clear the site, *provided, however*, that finished compost material and fertilizer may be retained on the site in connection with the operation of a wholesale/retail commercial nursery business, subject to such conditions as may be imposed by the City.

4. Nursery Products and Meberg shall, use their best efforts to relocate the Composting Facility to a new site, located within or outside the City limits of the City of Adelanto, and to obtain all necessary permits therefor, on or before September 1, 2005.

B. Abandonment of Conditional Use Permit

The parties agree that the Conditional Use Permit approved by the Planning Commission on December 4, 2001 shall be deemed abandoned and shall have no further force and effect as of September 1, 2005, or upon such earlier date as composting activities cease at the Composting Facility site.

C. Amendment to Bio-Solids Agreement

Concurrently with the execution of this Settlement Agreement, the parties shall execute an Amendment to the existing Bio-Solids Agreement, in the form attached hereto as Exhibit A.

D. Change of Name or Corporate Entity

The parties anticipate that the new composting facility may be operated under a business name different from Nursery Products, or by a corporate entity different from Nursery Products. The parties hereby agree that this Settlement Agreement, and the Amendment to the existing Bio-Solids Agreement, shall apply to and be binding upon any corporate or other legal entity in which Nursery Products or Meberg has an ownership interest, and which is engaged in the composting business in the County of San Bernardino or at a location determined by the City to be within a reasonable distance for delivery of bio-solids generated at the City's wastewater treatment plant.

E. Compliance Schedule: Fire Hydrants

1. Nursery Products and Meberg shall submit to the City, on or before January 1, 2005, complete plans for installation of all fire hydrants required by the City's Fire Department for the Composting Facility.
2. Nursery Products and Meberg shall, on or before March 1, 2005, commence construction of water lines, fire hydrants, and other required fire suppression facilities in accordance with plans approved by the City of Adelanto.
3. Nursery Products and Meberg shall, on or before September 1, 2005, complete construction of water lines, fire hydrants, and other required fire suppression facilities in compliance with plans approved by the City of Adelanto.

F. Compliance Schedule: Street Lighting

1. Nursery Products and Meberg shall submit to the City, on or before January 1, 2005, complete plans for installation of all street lighting on Pansy Road as required for the Composting Facility.
2. Nursery Products and Meberg shall, on or before July 1, 2005, commence construction of street lighting on Pansy Road in accordance with plans approved by the City of Adelanto.
3. Nursery Products and Meberg shall, on or before September 1, 2005, complete construction of street lighting on Pansy Road in accordance with plans approved by the City of Adelanto.

G. Compliance Schedule: Landscaping

1. Nursery Products and Meberg shall submit to the City, on or before January 1, 2005, complete plans for landscaping the perimeter of the site, as required by the Mitigation Monitoring Plan approved by the Planning Commission on December 4, 2001.
2. Nursery Products and Meberg shall, on or before July 1, 2005, commence planting and landscaping on the perimeter of the site, in accordance with plans approved by the City of Adelanto.
3. Nursery Products and Meberg shall, on or before September 1, 2005, complete planting and landscaping on the perimeter of the site, in accordance with plans approved by the City of Adelanto.

H. Compliance Schedule: Paving of Aster Road

1. As of September 1, 2005, or upon such earlier date as composting activities cease at the Composting Facility site, the obligation of Nursery Products and Meberg to pave the entirety of Aster Road, as required by the Conditional Use Permit approved by the Planning Commission on December 4, 2001, shall be deemed vacated.

2. Nursery Products and Meberg understand and agree that a condition of issuance of a Certificate of Occupancy for any future use of the subject property shall be a requirement that all required dedications and improvements abutting rights-of-way for the site have been made to the ultimate right-of-way shown in the General Plan and as determined by the City Engineer, as provided in Adelanto Municipal Code Section 17.10.090, *et seq.* Specifically, Nursery Products and Meberg understand and agree that, as a condition of operating any business or commercial activity on the subject property, they will be required to construct and install curbs, gutters, sidewalks, street trees, traffic improvements and drainage on Aster Road, and to pave Aster Road to the center line, as provided in Adelanto Municipal Code Section 17.10.090(a)(1).

3. As a condition and term of this Settlement Agreement, the City, Nursery Products, and Meberg agree that in lieu of the required improvements, the City Council shall accept from Nursery Products and Meberg an agreement to make the specified improvements concurrently upon the development of the parcels of property located to the east of the subject property, and identified as Assessor's Parcel Nos. 3128-121-01, 3128-121-02, and 3128-121-03, but in any event not later than September 1, 2010, as provided in Adelanto Municipal Code Section 17.10.090(d)(1). The City, Nursery Products, and Meberg agree that the agreement to make the specified improvements shall be accompanied by security deposits, a corporate surety bond, or other security as authorized by the City Engineer, as provided in Adelanto Municipal Code Section 17.10.090(d)(2) and (3), and further that the security required shall be similar to that required of other owners of similar property.

4. Nursery Products and Meberg understand and agree that a condition of issuance of a Certificate of Occupancy for any future use of the subject property shall be a requirement that the primary vehicular entrance to the subject property shall be from Pansy Road, and that the primary vehicular entrance may not be from Aster Road unless and until Aster Road is fully paved and improved, between Holly Road and Pansy Road, as provided in Adelanto Municipal Code Section 17.10.090(a)(1).

I. Control of Odors, Vectors, Trash, and Dust

The parties agree that until composting activities at the Composting Facility cease, Nursery Products and Meberg shall use best efforts to eliminate or minimize offensive odors, vectors, trash, and dust emanating from the site. Specifically, Nursery Products and Meberg agree to refrain from accepting delivery of green waste or of any other materials known to aggravate problems of offensive odors, vectors, trash and dust emanating from the Composting Facility site.

J. Release of City's Claims for Attorney's Fees and Costs

In consideration of the agreements and undertakings set forth herein, City hereby releases Nursery Products and Meberg of and from any and all liability for payment of taxable costs and attorney's fees incurred in defending the lawsuit, pursuant to 42 U.S.C. §1988.

K. Abandonment of Plaintiffs' Right to Appeal from Judgment

In consideration of the agreements and undertakings set forth herein, Nursery Products and Meberg hereby abandon and relinquish any rights they may have to appeal from the judgment entered against them on October 8, 2004.

L. Default

If any party fails to perform any obligation under this Settlement Agreement, the non-defaulting party may institute legal proceedings seeking a decree of specific performance or injunctive relief to enforce the terms of this Settlement Agreement. If an action is brought to enforce or interpret provisions of this Settlement Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

M. Notices

Any notice or communication required under this Settlement Agreement shall be in writing, and shall be delivered personally, by facsimile (with original

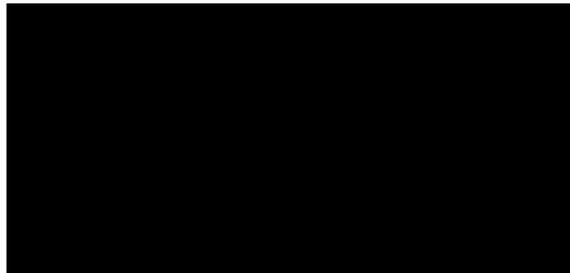
forwarded by United States Mail), or by Federal Express or other similar courier promising overnight delivery. Notice shall be deemed to have been duly given and received: (a) when delivered, if personally delivered to the recipient; (b) when fully transmitted to the recipient's facsimile device, if sent by facsimile during normal business hours, provided such device is capable of generating a written confirmation of such transmission and receipt and provided further that an original is deposited in first-class mail within two business days thereafter; or (c) on the first business day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service. Any party hereto may at any time, by giving three days' written notice to the other party, designate a new address and/or facsimile number for notices and communications pursuant to this Settlement Agreement.

If to the City:

City of Adelanto
Attention: City Manager



With a copy to:
Marguerite P. Battersby, Esq.
City Attorney

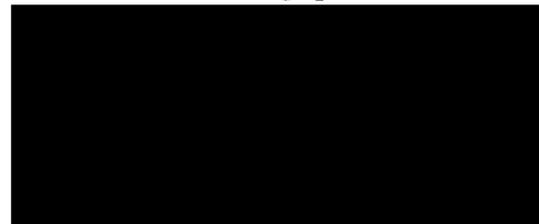


If to Nursery Products:

Nursery Products, LLC

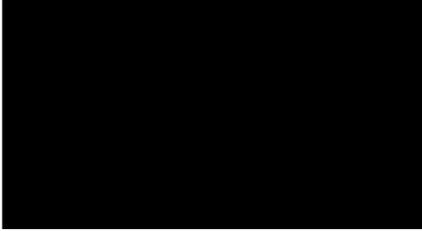


With a copy to:
David G. Hagopian, Esq.
Holdsworth & Hagopian, LLP



If to Jeff Meberg:

Jeff Meberg



With a copy to:

David G. Hagopian, Esq.
Holdsworth & Hagopian, LLP



N. Warranty of Capacity to Execute Agreement

Each party represents and warrants that the individuals executing this Settlement Agreement on each party's behalf possess full authority to execute this agreement and to settle and compromise all claims settled and compromised by this agreement.

O. Entire Agreement, Amendments, and Successors in Interest

This Settlement Agreement contains the entire agreement of the parties and supersedes any and all prior or contemporaneous understandings, negotiations, representations, promises, and agreements, oral or written, by or between the parties with respect to the matters set forth in this Settlement Agreement. This Settlement Agreement shall not be amended, modified, or otherwise changed except by a writing duly signed by authorized representatives of Nursery Products, Meberg, and the City. This Settlement Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each of the parties.

P. Legal Advice

In entering into this Settlement Agreement, each party has had the opportunity to consult with and rely upon the advice of the attorneys of their own choice. Each party represents and warrants that the terms of this Settlement Agreement have been completely read by and explained to them by their attorneys,

and that those terms are fully understood and voluntarily accepted by them.

Q. Severability

If any portion, provision, or part of this Settlement Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Settlement Agreement, and shall not effect the validity or enforceability of such remaining portions, provisions, or parts.

R. Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

S. Execution of Counterparts

This Settlement Agreement shall become effective upon execution by all parties. This agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall be deemed to constitute one and the same document.

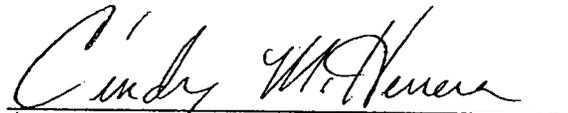
[Agreement continues next page]

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of November 1, 2004.

CITY OF ADELANTO

By: 
Mayor

ATTEST:


City Clerk

NURSERY PRODUCTS, LLC

By: _____
Jeff Meberg
President

By: _____
Secretary

JEFF MEBERG

By: _____
Jeff Meberg

[Signatures continue next page]

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of November 1, 2004.

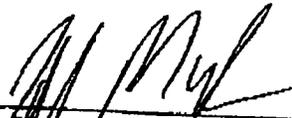
CITY OF ADELANTO

ATTEST:

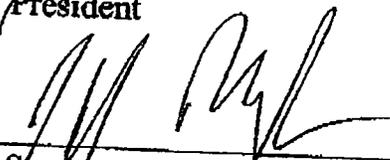
By: _____
Mayor

City Clerk

NURSERY PRODUCTS, LLC

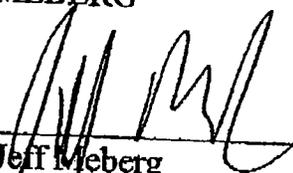
By: 

Jeff Meberg
President

By: 

Secretary

JEFF MEBERG

By: 

Jeff Meberg

[Signatures continue next page]

APPROVED AS TO FORM AND CONTENT:

HOLDSWORTH & HAGOPIAN, LLP
DAVID G. HAGOPIAN

By



David G. Hagopian
Attorneys for Plaintiffs,
Nursery Products, LLC
and Jeff Meberg

MARGUERITE P. BATTERSBY
CITY ATTORNEY
CITY OF ADELANTO

RICHARDS, WATSON & GERSHON
A Professional Corporation
MITCHELL E. ABBOTT
PATRICK K. BOBKO
GINETTA L. GIOVINCO

By



Mitchell E. Abbott
Attorneys for Defendant,
City of Adelanto

“EXHIBIT A”

AMENDMENT TO BIO-SOLID WASTE DISPOSAL AGREEMENT

TPS NURSERY PRODUCTS, NURSERY PRODUCTS, LLC, JEFF MEBERG, and the CITY OF ADELANTO hereby amend the “Bio-Solid Waste Disposal Agreement” dated as of June 26, 2001 between TPS NURSERY PRODUCTS and the CITY OF ADELANTO, as follows:

1. All references to TPS Nursery Products in the “Bio-Solid Waste Disposal Agreement” shall be deemed references to Nursery Products, LLC.
2. Paragraph 2 of the “Bio-Solid Waste Disposal Agreement” shall be amended to read: “Commencing November 1, 2004 and continuing for forty-eight (48) years thereafter, TPS Nursery Products or Nursery Products, LLC will accept for processing, process and dispose of Class ‘B’ bio-solids generated by or within the City of Adelanto, not to exceed five thousand (5,000) tons per year without cost to CITY or its residents.”
3. A new Paragraph 17 is added to the “Bio-Solid Waste Disposal Agreement” to read: “It is hereby agreed that this ‘Bio-Solid Waste Disposal Agreement’ and the ‘Amendment to Bio-Solid Waste Disposal Agreement’ shall apply to and be binding upon any corporate or other legal entity in which TPS Nursery Products, Nursery Products, LLC, or Jeff Meberg has an ownership interest, and which is engaged in the composting business in the County of San Bernardino or at a location determined by the City to be within a reasonable distance for delivery of bio-solids generated at the City’s wastewater treatment plant.”

“EXHIBIT A”

In all other respects, the “Bio-Solid Waste Disposal Agreement,” as amended, remains in full force and effect.

Dated: November 1, 2004

ATTEST:

City Clerk

CITY OF ADELANTO

By: 

Mayor

TPS NURSERY PRODUCTS

By: _____
Jeff Meberg

NURSERY PRODUCTS, LLC

By: _____
Jeff Meberg
President

By: _____
Secretary

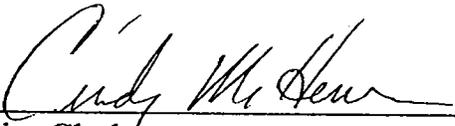
Jeff Meberg

“EXHIBIT A”

In all other respects, the “Bio-Solid Waste Disposal Agreement,” as amended, remains in full force and effect.

Dated: November 1, 2004

ATTEST:



City Clerk

CITY OF ADELANTO

By: _____
Mayor

TPS NURSERY PRODUCTS

By: _____
Jeff Meberg

NURSERY PRODUCTS, LLC

By: _____
Jeff Meberg
President

By: _____
Secretary

Jeff Meberg

"EXHIBIT A"

In all other respects, the "Bio-Solid Waste Disposal Agreement," as amended, remains in full force and effect.

Dated: November 1, 2004

ATTEST:

CITY OF ADELANTO

City Clerk

By: _____
Mayor

TPS NURSERY PRODUCTS

By: _____
Jeff Meberg

NURSERY PRODUCTS, LLC

By: _____
Jeff Meberg
President

By: _____
Secretary

By: _____
Jeff Meberg



HOLDSWORTH & HAGOPIAN

David G. Hagopian Phone: 714.384.4122
E-mail: dhagopian@hhlawfirm.com

June 21, 2005

Via Facsimile

Mitchell E. Abbott, Esq.
Richards Watson Gershon



Re: *Nursery Products, LLC, et al. v. City of Adelanto, et al.*

Dear Mr. Abbott:

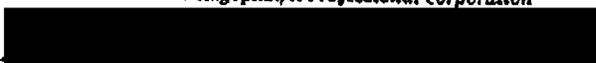
This letter responds to our conversation last week, at which time you inquired as to the plans of Nursery Products to cease receiving waste and cease its composting operations at its Adelanto site. Nursery Products intends to stop receiving waste and bio-solids at the Adelanto site on July 1, 2005 and will stop composting materials there on September 1, 2005.

Very truly yours,


David G. Hagopian

DGH/bh

Holdsworth & Hagopian, A Professional Corporation



nursery/adelanto/com/abbott-12.tu

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022305













