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REGION IX
HEALTH CLERK

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United States Environmental Protection Agency, Region IX

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6 Attorneys for Complainant
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8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION IX**

10 75 Hawthorne Street
San Francisco, California 94105

11
12 IN THE MATTER OF:)
13)
14 Tahiti Nui Enterprises, Inc. LLC and Christian)
Marston,)
15)
Hanalei, Hawaii,)
16 Respondents.)
17)
18 Proceedings under Section 1423(c) of the Safe)
Drinking Water Act, 42 U.S.C. § 300h-2(c).)
19)

Docket No.: UIC-09-2012-0004
CONSENT AGREEMENT AND
[PROPOSED] FINAL ORDER

20 **I. AUTHORITY**

21 This Consent Agreement is entered into and the [Proposed] Final Order is issued under the
22 authorities vested in the Administrator of the United States Environmental Protection Agency (“EPA” or
23 “Complainant”) by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act (the “SDWA” or the
24 “Act”), 42 U.S.C. §§ 300h-2(c), 300j-4(a). The Administrator has delegated these authorities to the
25 Regional Administrator of EPA Region IX. The Regional Administrator in turn has delegated the

1 authority to sign the Consent Agreement to the Director of the Enforcement Division, EPA Region IX.
2 In accordance with this authority, and with the “Consolidated Rules of Practice Governing the
3 Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of
4 Permits,” 40 C.F.R. Part 22 (hereinafter “Consolidated Rules of Practice”), the Director of the
5 Enforcement Division, EPA Region IX and Christian Marston and Tahiti Nui Enterprises, Inc.
6 (“Respondents”), hereby agree to the terms of this Consent Agreement and to the issuance of the
7 [Proposed] Final Order (CA/FO).

8
9 **II. CASE PROCEEDINGS**

10 1. Complainant EPA initiated these proceedings pursuant to Section 1423(c) of the Safe Drinking
11 Water Act (the “SDWA” or the “Act”), 42 U.S.C. § 300h-2(c). On August 23, 2012, EPA filed the
12 Proposed Administrative Order for Penalties and Compliance, Docket No. UIC-09-2012-004
13 (“Complaint”) against Respondents in accordance with the Consolidated Rules of Practice. In the
14 Complaint, EPA alleged that Respondents violated the Act and its UIC Program regulations at 40 C.F.R.
15 Part 144 by failing to close large capacity cesspools Respondents owned and operated in Hanalei,
16 Hawaii.

17 2. In accordance with Section 1423(c)(3)(B) of the Act, 42 U.S.C. § 300h-2(c)(3)(B) and 40 C.F.R.
18 § 22.45(b), Complainant published public notice of the Complaint on the EPA Region IX website on
19 August 27, 2012 and the public comment period closed on September 28, 2012. EPA did not receive
20 any comments on the Complaint.

21 3. After pre-hearing briefing and exchange of evidentiary exhibits, on September 30, 2013, the
22 Presiding Officer issued an Order granting Complainant’s Motion for Partial Acceleration Decision on
23 Liability. This Order resolved the question of Respondents’ liability for violations of the Act alleged in
24 the Complaint. Respondents provided EPA and the Hawaii Department of Health with proof of closure
25 of the subject LCCs and installation of an Individual Wastewater System (IWS) on October 31, 2013.

1 4. EPA and Respondents (referred together as “the Parties”) entered into negotiations with the
2 assistance of a neutral in an attempt to settle the remaining matter of administrative penalties.

3 5. The Parties agree that settlement of the remaining matters at issue without litigation will save
4 time and resources, is in the public interest, is consistent with the provisions and objectives of the Act
5 and applicable regulations, and that entry of this CA/FO is the most appropriate means of resolving such
6 matters.

7
8 **III. SETTLEMENT TERMS**

9 **The Parties agree as follows:**

10 **A. General Provisions**

11 1. Respondents admit the jurisdictional allegations of the Complaint and agree not to contest, in
12 any administrative or judicial forum, EPA’s jurisdiction to enter into this CA/FO or to enforce the terms
13 of this CA/FO.

14 2. Respondents neither admit nor deny the specific factual allegations set forth in the Complaint.

15 3. Respondents consent to the issuance of this CA/FO and the conditions specified herein,
16 including the assessment and payment of the administrative civil penalty in accordance with the terms of
17 this CA/FO.

18 4. Respondents waive any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. §
19 300h-2(c)(3). Respondents waive any right to contest the allegations contained in the Complaint and this
20 Consent Agreement, and waive their right to appeal this CA/FO.

21 5. This CA/FO, inclusive of all exhibits, appendices, and attachments, is the entire agreement
22 between the Parties to resolve EPA’s civil penalty claim against Respondents for the specific SDWA
23 violations alleged in the Complaint. Full compliance with this CA/FO, which includes payment of
24 administrative civil penalties of \$69,000, shall constitute full settlement of Respondents’ liability for
25 federal civil penalties for the SDWA violations specifically alleged in the Complaint.

1 6. The provisions of this CA/FO shall apply to and be binding upon Respondents, their officers,
2 directors, agents, servants, authorized representatives, employees, and successors or assigns. Action or
3 inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or
4 for Respondents shall not excuse any failure of Respondents to fully perform their obligations under this
5 CA/FO. Issuance of this CA/FO does not in any case affect the right of EPA to pursue appropriate
6 injunctive or other equitable relief or criminal sanctions for any violations of law.

7 7. This CA/FO is not a permit or modification of a permit, and does not affect Respondents'
8 obligation to comply with all federal, state, local laws, ordinances, regulations, permits, and orders.
9 Issuance of, or compliance with, this CA/FO does not waive, extinguish, satisfy, or otherwise affect
10 Respondents' obligation to comply with all applicable requirements of the SDWA, regulations
11 promulgated thereunder, and any order or permit issued thereunder.

12 8. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO, as well
13 as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any actions against
14 Respondents for noncompliance with this CA/FO. Violation of this CA/FO shall be deemed a violation
15 of the Act.

16 9. Except as stated in paragraphs 8, 13, 14 and 15, each party hereto shall bear its own costs and
17 attorneys fees incurred in this proceeding.

18 10. This Consent Agreement may be executed and transmitted by facsimile, email or other
19 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of
20 which shall constitute an instrument. If any portion of this Consent Agreement is determined to be
21 unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall
22 remain in full force and effect.

23 11. The undersigned representative of each party certifies that he or she is duly and fully
24 authorized to enter into and ratify this Consent Agreement.

1 **B. Penalty**

2 12. Respondents agree to pay to the United States an administrative civil penalty of **Sixty-Nine**
3 **Thousand dollars** (\$69,000), no later than thirty (30) days following the effective date of the Final
4 Order (hereafter referred to as the “due date”) to settle the administrative penalties alleged in the
5 Compliant.

6 13. The administrative civil penalty referenced above shall be made payable to the Treasurer,
7 United States of America, in accordance with any acceptable method of payment listed in Attachment A,
8 “EPA Region IX Collection Information,” which is incorporated by reference as part of this CA/FO.
9 Concurrent with the payment of the penalty, Respondents shall provide written notice of payment,
10 referencing the title and docket number of this case, via certified mail to each of the following:

11 a) Regional Hearing Clerk
12 Office of the Regional Counsel (ORC-1)
13 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

14 b) Alexa Engelman
15 Office of Regional Counsel (ORC-2)
16 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

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18 14. If the full penalty payment is not received on or before the due date, interest shall accrue on any
19 overdue amount from the due date through the date of payment, at the annual rate established by the
20 Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of
21 \$15.00 will be assessed for each thirty- (30) day period (or any portion thereof) following the due date in
22 which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any
23 principal amount not paid within ninety (90) days of the due date. Respondents shall tender any interest,
24 handling charges, or late penalty payments in the same manner as described above.

1 15. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), if Respondents fail to pay
2 by the due date the administrative civil penalty assessed in this CA/FO, EPA shall bring a civil action in
3 an appropriate district court to recover the amount assessed (plus costs, attorneys fees, and interest). In
4 such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.
5 42 U.S.C. § 300h-2(c)(7).

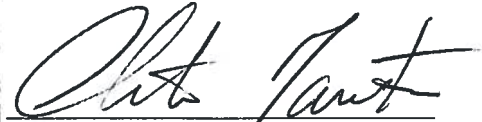
6 16. Respondents shall not deduct the civil penalty, nor any interest, late penalty payments, or
7 administrative handling fees provided for in this CA/FO from Respondents' federal, state, or local
8 income taxes.

9
10 **IV. EFFECTIVE DATE AND TERMINATION**

11 This CA/FO shall terminate only after Respondents have complied with all requirements of the
12 CA/FO, including payment of any interest and late fees and EPA has issued a written notice of
13 termination. The effective date of the CA/FO shall be the date that the Final Order is filed.
14

15 FOR THE CONSENTING PARTIES:

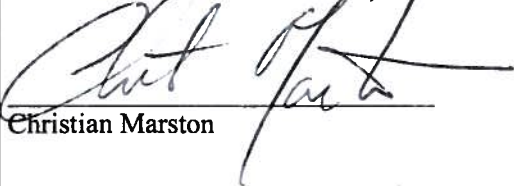
16 FOR TAHITI NUI ENTERPRISES, INC.:

17 

18 Christian Marston, Director
19 Tahiti Nui Enterprises, Inc.

Date: 5-2-14

20
21 FOR CHRISTIAN MARSTON, as an individual:

22 
23 Christian Marston

Date: 5-2-14

1 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

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By / s/ Kathleen Johnson for KS

Date: 5/22/14

Kathleen Johnson
Director, Enforcement Division, Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

1 **ATTACHMENT A**

2 **EPA Region IX Collection Information:**

3 Cincinnati Accounts Receivable Branch of U.S. EPA receives payments for regional civil
4 penalties. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall
5 into two categories: wires and Automated Clearinghouse (“ACH”). Wires are same day and more costly.
6 ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH
7 payments must be conducted through the sender’s bank. Payment shall be made by cashier’s or
8 certified check payable to the “Treasurer, United States of America,” and shall be sent by
9 certified mail, return receipt requested (or be paid by one of the other methods listed below) and
10 sent as follows:

11 **Regular Mail:**

12 U.S. Environmental Protection Agency
13 Fines and Penalties
14 Cincinnati Finance Center
15 PO Box 979077
16 St. Louis, MO 63197-9000

17 **Wire Transfers:**

18 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following
19 information:

20 Federal Reserve Bank of New York
21 ABA = 021030004
22 Account = 68010727
23 SWIFT address = FRNYUS33
24 33 Liberty Street
25 New York, NY 10045
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

26 **Overnight Mail:**

27 U.S. Bank
28 1005 Convention Plaza
29 Mail Station SL-MO-C2GL
30 ATTN Box 979077
31 St. Louis, MO 63101

1 ACH (also known as REX or remittance express):

2 Automated Clearinghouse (ACH) for receiving US currency
3 PNC Bank
4 808 17th Street, NW
5 Washington, DC 20074
6 ABA = 051036706
7 Transaction Code 22 – checking
8 Environmental Protection Agency
9 Account 31006
10 CTX Format

11 On Line Payment:

12 This payment option can be accessed from the information below:

13 www.pay.gov
14 Enter “sfol.1” in the search field
15 Open form and complete required fields

16 If clarification regarding a particular method of payment remittance is needed, contact the EPA
17 Cincinnati Finance Center at 513-487-2091.

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

3 75 Hawthorne Street
4 San Francisco, California 94105

5 IN THE MATTER OF:)

6 Tahiti Nui Enterprises, Inc. LLC and Christian)
7 Marston,)

8 Hanalei, Hawaii,)

9 Respondents.)

10 Proceedings under Section 1423(c) of the Safe)
11 Drinking Water Act, 42 U.S.C. § 300h-2(c).)

Docket No.: UIC-09-2012-0004
[PROPOSED] FINAL ORDER


12
13 The United States Environmental Protection Agency Region IX (“EPA”) and Christian Marston and
14 Tahiti Nui Enterprises, Inc. (“Respondents”), having entered into the foregoing Consent Agreement, and
15 EPA having duly publicly noticed the Proposed Administrative Order for Penalties and Compliance
16 (“Complaint”) regarding the matters alleged therein,

17
18 IT IS HEREBY ORDERED THAT:

19 1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2012-0004) be
20 entered; and

21 2. Respondent will pay an administrative civil penalty of Sixty-Nine Thousand dollars (\$69,000)
22 dollars to the Treasurer of the United States of America in accordance with the terms set forth in the
23 Consent Agreement.

1 This Final Order is effective on the date that it is filed. This Final Order constitutes full adjudication of
2 the Complaint issued by EPA in this proceeding.

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5 
6 Jared Blumenfeld
7 Regional Administrator, Region IX
8 U.S. Environmental Protection Agency

Date: May 22, '14

Certificate of Service

I hereby certify that on May 22, 2014, the foregoing CONSENT AGREEMENT AND FINAL ORDER (Docket No. UIC-09-2012-0004) was sent to the following persons, in the manner specified:

Original and one copy hand delivered:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Copy by UPS overnight mail, signature required:

Harold Bronstein, Esq.
P.O. Box 3064
Lihue, Hawaii 96766

Dated May 22, 2014



Alexa Engelman

EPA Region 9 Office of Regional Counsel