

1 Robb Hewitt, Attorney at Law (CB#158751)  
LAW OFFICES OF ROBB HEWITT  
2 1317 – 15th Street, Suite A  
Sacramento, CA 95814  
3 (916) 447-2012  
Attorney for Capitol Waste, Inc.  
4 Iva Whitmire, Kenneth R. Whitmire

5  
6 IN THE UNITED STATES DISTRICT COURT FOR THE  
7 EASTERN DISTRICT OF CALIFORNIA  
8 SACRAMENTO DIVISION  
9

10 UNITED STATES OF AMERICA, ) Case No.: 2:08-CV-02378-JAM-EFB  
 )  
11 Plaintiff, ) **STIPULATION FOR ENTRY OF ORDER**  
 vs. ) **GRANTING PRELIMINARY**  
12 ) **INJUNCTION**  
CAPITOL WASTE, INC. IVA WHITMIRE, )  
13 KENNETH R. WHITMIRE, ) Hearing Date: January 14, 2009  
 ) Time: 9:00 am  
14 Defendants. ) Place Courtroom 6, 14<sup>th</sup> Floor  
 ) Before: Judge John A. Mendez  
15 )

16 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff, UNITED  
17 STATES OF AMERICA, and each defendant CAPITOL WASTE, INC. , IVA WHITMIRE, and  
18 KENNETH R. WHITMIRE, (hereinafter the “Parties”), through their respective counsel, as  
19 follows:

20 WHEREAS: the Defendants and each of them agree that in order to save the parties extensive  
21 costs, legal fees and resources required to litigate the issues raised in plaintiff’s complaint and  
22 request for temporary and permanent injunctive relief; and

23 WHEREAS the parties agree that there is a strong likelihood of the Court granting the United  
24

1 States Motion for Preliminary Injunction;

2 NOW THEREFORE: the Parties agree that, on the Court's approval, a preliminary injunction  
3 issue enjoining Defendants herein as follows:

4 A The Court ORDERS that the Defendants (individually and doing business under any other  
5 name or entity), and their representatives, agents, servants, or employees are enjoined from failing  
6 to withhold and pay over to the IRS all present and future employment taxes, including federal  
7 income, FICA, and FUTA taxes, required by law as they become due from time to time;

8 B. The Court ORDERS the Defendants to file accurate and timely present and future  
9 employment and unemployment tax returns (including Forms 940 and 941), and Forms W-2 and to  
10 send copies of such returns and Forms W-2 to counsel for the United States at the same time that  
11 they file the originals;

12 C. The Court ORDERS, effective immediately, that Defendants, within three days of making  
13 each Capitol Waste payroll, make employment tax deposits with an appropriate financial  
14 institution; and by the next business day following such deposit, send by fax to IRS Revenue  
15 Officer Charles Duff (at 916-974-5976) or his designee a receipt evidencing the deposit as well as  
16 a completed worksheet showing the method of calculation and the amount for such deposit;

17 D. The Court ORDERS that Defendants file complete and accurate Forms 941 for Capitol  
18 Waste for all quarters beginning with the last quarter of 2000, file complete and accurate Forms  
19 940 for Capitol Waste for all years after 1999, file complete and accurate Forms 1120 for Capitol  
20 Waste for all years after 2000, all within 90 days of the entry of this order. Within seven days of  
21 filing of such returns with the IRS, Defendants shall file a sworn statement with the Court  
22 declaring that such returns have been filed with the IRS;

23 E. The Court ORDERS the Defendants to file with the Social Security Administration and  
24 issue to their employees, at their last known addresses, complete and accurate Forms W-2 for the

1 years 2005 and 2007 within 90 days of the entry of the preliminary injunction, and to send copies  
2 of these Forms W-2 to counsel for the United States;

3 F. The Court ORDERS that Defendants Kenneth and Iva Whitmire file complete and accurate  
4 Forms 1040 for all years after 2000, within 90 days of the entry of this order. Within seven days of  
5 filing of such returns with the IRS, Defendants Kenneth and Iva Whitmire shall file a sworn  
6 statement with the Court declaring that such returns have been filed with the IRS;

7 G. The Court ORDERS that Defendants (individually and doing business under any other  
8 name or entity), and their representatives, agents, servants, or employees are enjoined from  
9 transferring any money or property to any other entity in order to have the salaries or wages of the  
10 Defendants' employees paid by the transferee entity (excepting the use by Defendants of bona fide,  
11 independent and licensed outside payroll services, subcontractors, or independent contractors or for  
12 persons or entities for which a Form 1099 is properly and lawfully issued by Defendants);

13 H. The Court ORDERS the Defendants (individually and doing business under any other name  
14 or entity), and their representatives, agents, servants, or employees, are enjoined from assigning or  
15 transferring any property or property rights, or making any disbursements for any purpose, from  
16 the date of the preliminary injunction is issued, until the present or future employment tax  
17 liabilities, incurred by Defendants, including federal income and FICA taxes, that accrue after the  
18 injunction date, are paid to the IRS; and

19 I. And further, the Court ORDERS Iva Whitmire, Kenneth Whitmire or any person or entity  
20 authorized by them to sign checks or make disbursements via money order, or other method, from  
21 Capitol Waste's bank accounts, cash funds or other property, to file a statement within fourteen  
22 (14) days of the date of the preliminary injunction is issued with IRS Revenue Officer Charles Duff  
23 or his designee to the effect that they have read the preliminary injunction issued by this Court, that  
24 they will personally determine, for each pay period, that FICA and withholding income taxes, as

1 they become due, are fully paid to the IRS prior to signing checks or otherwise disbursing funds;  
2 and, that they will not assign or transfer any property, or rights of property, of Capitol Waste,  
3 unless all employment taxes (including federal withholding and FICA taxes) for every pay period  
4 from the date of the preliminary injunction was issued, have been paid.

5 DATED: December \_\_\_\_\_, 2008

ADAIR F. BOROUGHS

6 \_\_\_\_\_  
Attorney for The United States of America

7 DATED: December \_\_\_\_\_, 2008

ROBB HEWITT

8 \_\_\_\_\_  
9 Attorney for Capitol Waste, Inc., Iva Whitmire  
And Kenneth R. Whitmire

10 IT IS SO ORDERED

11 DATED: January 5, 2009

JUDGE OF THE UNITED STATES DISTRICT  
12 COURT

13 /s/ John A. Mendez  
The Honorable John A. Mendez