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7
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9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF KERN**
12 **METROPOLITAN DIVISION**

13 **THE PEOPLE OF THE STATE OF**
14 **CALIFORNIA, EX REL. BILL LOCKYER,**
15 **Attorney General of the State of California,**

16 **Petitioner/Plaintiff,**

17 **v.**

18 **COUNTY OF KERN; ANN BARNETT in her**
19 **Official Capacity as County Clerk and Registrar of**
20 **Voters of the County of Kern, and DOES 1**
21 **through 10, inclusive,**

22 **Respondents/Defendants.**

CASE NO. S-1500-CV 256653 LSE

ENFORCEABLE SETTLEMENT
AGREEMENT AND
STIPULATION; ORDER

23 **GENERAL PROVISIONS**

24 1. In this action, the People of the State of California, ex rel. Bill Lockyer, Attorney
25 General of the State of California (“Attorney General”) filed a Petition for Writ of Mandate and
26 Complaint for Injunctive Relief (“Petition”) against the County of Kern and Ann Barnett, in her
27 official capacity as County Clerk and Registrar of Voters (hereafter collectively referred to as
28 “Kern County” or “County”) to compel them to comply with state and federal architectural
accessibility standards that the Attorney General contends apply to polling places during federal,

1 state and local elections.

2 2. Although Kern County denies all allegations in the Petition, the parties wish to
3 resolve their differences expeditiously, and without the burden, expense, and delay of further
4 litigation. Therefore, they have entered into this Enforceable Settlement Agreement and
5 Stipulation; Order (hereafter the “Agreement”).

6 3. On October 17, 2005, the Attorney General filed this action against the County in
7 Kern County Superior Court. The first cause of action is a petition for writ of mandate pursuant
8 to California Code of Civil Procedure section 1085 to redress the County’s alleged failure to
9 comply with California Elections Code section 12280. The second cause of action seeks
10 injunctive relief for the County’s alleged violation of Title II of the federal Americans with
11 Disabilities Act (“ADA”), United States Code, title 42, section 12131 et seq., and the regulations
12 promulgated thereunder. Kern County agrees that the Kern County Superior Court of the State
13 of California has subject matter jurisdiction for purposes of enforcing the terms and conditions of
14 this Agreement.

15 4. Kern County denies each and every allegation of the Petition that was filed
16 in this case on October 17, 2005. For purposes of this Agreement, nothing herein will be
17 construed as an acknowledgment, admission, or evidence of liability by Kern County of any
18 violation of law or of any issue of law or fact, including but not limited to the ADA and
19 California Elections Code section 12280.

20 5. The Attorney General and Kern County stipulate and agree that this Agreement
21 will remain in effect until March 31, 2011, unless such period of time is shortened or extended to
22 cover subsequent elections by stipulation of the parties or by order of this Court for good cause
23 shown. Although this is not a stipulated judgment, the parties jointly stipulate and request that
24 the Court retain jurisdiction over this case and over the parties personally until final performance
25 of the terms and obligations of this Agreement pursuant to California Code of Civil Procedure
26 section 664.6. For this purpose, the parties jointly stipulate and request that any applicable
27 statute, rule, or court order affecting timely prosecution of this action, including the five-year
28 dismissal statute set forth in Code of Civil Procedure section 583.310, will be tolled.

1 12. The term “Field Representative” will mean those persons whom the County has
2 designated to serve as the persons in charge of oversight of the operations of several polling
3 sites.

4 13. The term “ADA Set-Up-Crew” will mean those persons assigned to each polling
5 site who are responsible for installing temporary mitigation measures at the polling site.

6 14. The term “Poll Site Access Coordinator” will mean those persons who are
7 responsible for identifying, surveying, and selecting polling sites.

8 15. The term “Consultant” will mean the person whom the parties jointly stipulate
9 and agree will oversee the performance of the conditions and obligations as set forth in this
10 Agreement. The Attorney General and the County stipulate and agree that Sally Swanson
11 Architects will serve in the capacity of the Consultant. Any and all prior communications that
12 Sally Swanson Architects, including its employees and agents, had with the Attorney General’s
13 Office concerning the pre-litigation investigation and litigation of this matter or any other
14 matters will remain confidential. If at any time Sally Swanson Architects can no longer serve in
15 this capacity, then the County will propose a new Consultant who has sufficient expertise in the
16 state and federal disabled access laws, regulations, and guidelines that apply to this Agreement.
17 The County will notify the Attorney General’s Office within two weeks after a new Consultant
18 has been identified. If the Attorney General does not agree that the individual or entity identified
19 by the County should serve as the new Consultant, then each party will submit to the Court an
20 application for an order appointing a new Consultant. The application may include the name and
21 qualifications of each party’s proposed new Consultant and any opposition to the other party’s
22 nomination. The parties herein agree that only those persons who have sufficient expertise in the
23 state and federal disabled access laws, regulations, and guidelines that apply to this Agreement
24 will be nominated as a new Consultant. The Court may select and appoint as the new Consultant
25 one of the two persons nominated by the parties or a person of its own choice to fulfill the duties
26 set forth in this Agreement.

27 16. The term “Trainer” will mean the person or entity whom the parties jointly
28 stipulate and agree will provide the training as required by this Agreement. The County of Kern

1 has proposed that the State of California Department of Rehabilitation serve as the Trainer. The
2 Attorney General and the County stipulate and agree that the State of California Department of
3 Rehabilitation may serve in the capacity of the Trainer if the County secures the State of
4 California Department of Rehabilitation's agreement to do so. Any and all prior
5 communications that the Trainer may have had with the Attorney General's Office concerning
6 the pre-litigation investigation and litigation of this matter or any other matters will remain
7 confidential. Alternatively, the County may decide that the Consultant may also serve as the
8 Trainer. If at any time the State of California Department of Rehabilitation or the Consultant can
9 no longer serve in the capacity of the Trainer, then the County will propose a new Trainer who
10 has sufficient expertise in the state and federal disabled access laws, regulations, and guidelines
11 that apply to this Agreement. The new Trainer will not be a person who has been employed by
12 County in the past. The County will notify the Attorney General's Office within two weeks after
13 a new Trainer has been identified. If the Attorney General does not agree with the County's
14 proposed new Trainer, then each party will submit to the Court an application for an order
15 appointing a new Trainer. The application may include the name and qualifications of each
16 party's proposed new Trainer and any opposition to the other party's nomination. The parties
17 herein agree that only those persons who have sufficient expertise in the state and federal
18 disabled access laws, regulations, and guidelines that apply to this Agreement will be nominated
19 as a new Trainer. The Court may select and appoint as the new Trainer one of the two persons
20 nominated by the parties or a person of its own choice to fulfill the duties set forth in this
21 Agreement.

22 17. The term "survey" will mean the inspection of Kern County's polling places by
23 the Consultant and the Consultant's employees, agents, and contractors. In conducting the
24 surveys required by this Agreement, the Consultant will use the Checklist as defined below in
25 paragraph 18.

26 18. The term "Checklist" will mean a survey instrument that will be used by the
27 Consultant to collect data and evaluate whether the County's polling places are accessible. The
28 Checklist that the Consultant will use for the surveys of the polling sites under this Agreement is

1 the form that is attached hereto as Exhibit A. If the United States Department of Justice (US
2 DOJ) or the California Secretary of State revise their respective checklists or guidelines
3 referenced in paragraph 20 for a particular election covered by this Agreement, the Consultant
4 will make appropriate changes to the Checklist for the Consultant's survey of polling sites during
5 that election so that the Checklist comports with the US DOJ's and the California Secretary of
6 State's checklists or guidelines. In addition, the Checklist can be changed upon mutual
7 agreement by the parties or pursuant to a court order.

8 19. The terms "temporary measure" or "temporary mitigation measure" will mean
9 temporary modifications to a polling place that are implemented to remove barriers to
10 accessibility for voters with disabilities. Some examples of temporary measures include, but are
11 not limited to, portable ramps with edge protection and handrails where necessary, accessible
12 parking spaces marked off by traffic cones or other means, door threshold ramps, temporary
13 signs indicating an alternate accessible entrance or path of travel to the poll, propping open a
14 door, and grate covers. Though curbside voting may be provided by the County consistent with
15 Elections Code section 14282, subdivision (c), neither curbside voting nor absentee ballots will
16 be considered a temporary mitigation measure or render a polling site accessible as that term is
17 defined in paragraph (20) of this Agreement.

18 20. The terms "accessible" and "accessibility," when used to describe a polling place
19 will mean that the polling place meets the standards for accessibility as set forth in the US DOJ
20 ADA Checklist for Polling Places (February 2004) which incorporates specific provisions of the
21 ADA Accessibility Guidelines (ADAAG) codified at 28 C.F.R. Pt. 36, App A and the Secretary
22 of State's Accessibility Guidelines including the California Secretary of State's Polling Place
23 Accessibility Checklist (Updated 8/11/04, Supplemented 03/17/06) and any revised version of
24 those checklists or guidelines that may be issued by the US DOJ or the California Secretary of
25 State. The terms "accessible" and "accessibility" will also include any conditions that are only a
26 de minimis departure from the standards for accessibility set forth above.

27 21. The terms "substantial compliance" or "substantially compliant" will mean that
28 each of the County's polling places are accessible as defined in paragraph 20. To the extent that

1 a polling site is not accessible as that term is defined in paragraph 20, substantial compliance
2 with respect to that site will be met nonetheless if the County, pursuant to paragraph 24(b)
3 below, has used its best efforts and documented those efforts to select a site that is more
4 accessible through the use of temporary measures or otherwise and the County has requested that
5 the California Secretary of State make a determination, based upon substantial evidence
6 provided by the County, that no more accessible potential polling place is present within that
7 precinct. Prior to submitting a request to the Secretary of State regarding a determination that no
8 accessible polling site is available in a polling precinct, the County will follow the procedures set
9 forth in paragraph 24 subdivision (b) below.

10 22. The term “election cycle” will mean the primary and general elections held within
11 the same calendar year. For purposes of this Agreement, the first election cycle will commence
12 with the June 2008 primary election.

13 **DUTIES AND RESPONSIBILITIES**

14 23. The County will ensure that all of its polling sites are in substantial compliance as
15 that term is defined in paragraph 21 of this Agreement within the following timetable: (a) 35% of
16 the County’s polling sites will be in substantial compliance by the June 2008 California Primary
17 Election; (b) 55% of the County’s polling sites will be in substantial compliance by the 2008
18 November California General Election; (c) 75% of the County’s polling sites will be in
19 substantial compliance by the 2010 California Primary Election; and, (d) 100% of the County’s
20 polling sites will be in substantial compliance by the November 2010 California General
21 Election. Those polling sites that are determined to be accessible, as that term is defined by
22 paragraph 20 herein, during the survey of the February 2008 California Primary Election that is
23 described in paragraph 32(a) below, will be included as being accessible in the total calculation
24 for determining the County’s compliance with subdivision (a) of this paragraph 23.

25 24. In satisfying the duties set forth in paragraph 23 of this Agreement, the County
26 will do the following:

27 (a) The County will implement all feasible temporary mitigation measures for those
28 elements of its polling sites that are not accessible, but that can be made accessible through the

1 implementation of suitable temporary mitigation measures. If the County is unable to implement
2 any particular temporary mitigation measure at a polling site, then the County will document all
3 of its efforts in attempting to implement the temporary mitigation measure and/or the reasons
4 that a particular mitigation measure is not possible for that polling site. In so doing, the County
5 will give priority to implementing permanent and/or temporary mitigation measures at those
6 polling places identified in Exhibit B hereto.

7 (b) The County will use its best efforts to select new accessible polling places for
8 those polling places that cannot be made accessible with the implementation of temporary
9 measures. In so doing, the County will give priority to replacing those polling places identified
10 in Exhibit B hereto. In selecting new accessible polling sites, the County will implement the
11 following procedures:

12 i. The County will implement an outreach program that includes the formation of an
13 Accessible Voting Outreach Committee whose purpose is to involve members of the community
14 in the selection and location of accessible polling places and to encourage members of the
15 business community to offer their facilities for use as polling sites.

16 ii. For each precinct in which a polling place is not accessible and cannot be made
17 accessible with the implementation of temporary measures, the County will first assess the total
18 number of buildings within that precinct that may be appropriate to use as polling places. In
19 making this determination, the County need not assess buildings that are excluded by the
20 provisions of paragraph 24(b)(iii) below, or are otherwise buildings that are prohibited by law to
21 be used as polling places. Once the County determines the total number of buildings that are
22 appropriate for use as a polling place within that precinct, the County will further assess which
23 of those buildings may be available to use as potential polling places. For purposes of this
24 Agreement, with the exception of those buildings and facilities that are required by law to make
25 their facilities available to the County as a polling place on election days, a potential polling
26 place will be deemed unavailable for use as a polling place if the owner, manager, or other
27 authorized agent of the facility or building will not permit the County to use the facility or
28 building as a polling place.

1 iii. Unless information readily available to the County and the Consultant indicates
2 otherwise, it shall be presumed that the following buildings are not appropriate to replace an
3 existing polling place: a) single family residential properties; b) multi-family residential
4 properties that do not contain a separate community room space; and c) non-residential buildings
5 constructed, altered, or last substantially modified prior to July 1, 1982.

6 iv. Upon identifying potential polling sites as described in paragraph 24(b)(ii) above,
7 prior to each election covered by this Agreement, the County will survey a reasonable
8 percentage of those buildings and facilities appropriate and available for use as a polling site in
9 each precinct according to the requirements of the Checklist to determine if the facilities are
10 accessible until the County has surveyed all appropriate and available buildings and facilities in
11 that precinct. When selecting facilities to survey as potential polling places, the County will give
12 priority to those facilities that are required by California and/or federal law to be made available
13 to the County for voting during an election.

14 v. The County will document all efforts taken to locate an accessible polling place
15 within a precinct that has a polling place that is not accessible and has been identified as having
16 architectural barriers that cannot be mitigated through the implementation of temporary or
17 permanent accessibility measures. If the County locates a new potential polling site that appears
18 to meet all or most of the accessibility standards for state and federal polling sites, then the
19 County will survey that site to confirm whether it is accessible or can be made accessible
20 through the implementation of temporary accessibility measures. If the County cannot locate a
21 polling place within a precinct that is more accessible than the existing polling place in that
22 precinct, then the County will request that the California Secretary of State make a
23 determination, based upon substantial evidence provided by the County, that no more accessible
24 potential polling place is present within that precinct. If the County has complied with its
25 obligations under this Agreement, and is unable, despite its best efforts, to locate a facility that is
26 more accessible for use as a polling place than the existing polling place in that precinct, then the
27 County may continue to use the existing polling place until such time as the County finds a more
28 accessible polling place. The County's obligation to locate more accessible polling places is

1 continuing; however, once the County has complied with the procedures outlined in paragraph
2 24(a) through 24(b) of this Agreement with respect to a specific polling site, the County's duty
3 to locate a more accessible polling place for that site will be limited to conducting a reasonable
4 inquiry to determine whether a more accessible site may be available due to new construction or
5 the alteration of an existing building or facility since the last election or if an accessible but
6 previously unavailable polling site has become available for use as a polling site on election day.

7 25. The County will ensure that it has a separate binder of information for each
8 polling site concerning temporary mitigation measures that will be used at that polling place for
9 each election. The binder will contain photographs showing the correct location, designation,
10 and spacing of all temporary mitigation measures, including but not limited to cones and signage
11 for disabled parking spaces, thresholds, mitigation related to path of travel, etc. The binder will
12 also contain a document entitled "Site Specific Operating Procedure" for each polling place
13 listing the specific accessibility mitigation measures that must be undertaken on election day.
14 The binder will also contain a form that requires the Site Supervisor to evaluate the temporary
15 mitigation measures in place at the polling site. The County will ensure that the Site Supervisor
16 at each polling site will complete the form at three separate times throughout the day (e.g., 7:00
17 a.m., 11:00 p.m., and 4:00 p.m.). The purpose for having this form is to ensure that the
18 temporary mitigation measures are maintained throughout Election Day. The County will begin
19 compiling the binders immediately and will ensure that each of its polling sites has a binder as
20 described herein by the November 2008 election.

21 26. Within thirty (30) days of executing this Agreement, the County will contract for
22 the services of the Consultant. The County will pay all associated costs of the Consultant, not to
23 exceed a total of \$80,000.00 per fiscal year that this Agreement is in effect. This \$80,000.00
24 sum includes the costs associated with the surveys that the Consultant will conduct during the
25 elections covered by this Agreement. In allocating these funds for the Consultant's services, the
26 County will take all appropriate steps to ensure that there are sufficient funds to cover the costs
27 of the Consultant's surveys required under paragraphs 31 and 32 and the preparation of the
28 Consultant's reports required under paragraph 35 of this Agreement. If any funds are not

1 utilized in any fiscal year covered by this Agreement, then they will be applied and added to the
2 funds that the County will make available for the following fiscal year.

3 27. Within thirty (30) days of executing this Agreement, the County will contract for
4 the services of the Trainer. The County will pay all associated costs of the Trainer, not to exceed
5 a total of \$25,000.00 per fiscal year that this Agreement is in effect. If the Consultant provides
6 any training pursuant to paragraph 28 below, then all associated costs of that training are to paid
7 with the funds designated in this paragraph only. If any funds for the Trainer are not utilized in
8 any fiscal year covered by this Agreement, then they will be applied and added to the funds that
9 the County will make available for the following fiscal year.

10 28. Prior to February 1, 2008, the County will ensure that the Consultant and/or
11 Trainer conducts a minimum half-day training on state and federal disabled access laws and
12 regulations for the accessibility of polling places for those Kern County Elections Department
13 personnel who are responsible for selecting polling sites and/or ensuring that the County's
14 polling places are accessible. Thereafter, within 120 days prior to each election cycle covered by
15 the terms of this Agreement, the County will ensure that the Consultant and/or the Trainer
16 conducts a minimum half-day training on state and federal disabled access laws and regulations
17 for the accessibility of polling places and on any other issues involving accessibility for the ADA
18 Set-Up-Crew members and those Kern County Elections Department personnel or who are
19 responsible for selecting polling sites, implementing and/or selecting temporary mitigation
20 measures, and/or ensuring that the County's polling places are accessible. Within 120 days prior
21 to each general election covered by the terms of this Agreement, the County will ensure that the
22 Consultant and/or the Trainer conducts a minimum half-day training on state and federal
23 disabled access laws and regulations for the accessibility of polling places for all new ADA Set-
24 Up-Crew members and/or new Kern County Elections Department personnel or who are
25 responsible for selecting polling sites, implementing and/or selecting temporary mitigation
26 measures, and/or ensuring that the County's polling places are accessible. The County may
27 create an electronic visual and audio recording of the training conducted by the Consultant
28 and/or Trainer and use that recording to train all members of the ADA Set-Up-Crew who are

1 unable to attend any in-person training with the Consultant and/or Trainer. Prior to each election
2 that occurs during the term of this Agreement, the County will ensure that each ADA Set-Up-
3 Crew member reviews with each Site Supervisor the accessibility issues presented at their
4 particular polling place.

5 29. Within thirty (30) days of the execution of this Agreement, Kern County will
6 develop and submit to the Consultant, for the Consultant's review and written recommendations,
7 a proposed plan and any necessary policies or procedures that the County will follow to carry out
8 its obligations under this Agreement. The plan should also include specific information
9 concerning the policies and the procedures that the County will use to obtain substantial
10 compliance with those polling sites identified in Exhibit B. The County will finalize the plan
11 within thirty (30) days from the date that the County submits the plan to the Consultant, and
12 within thirty (30) days of its finalization, the County will provide a copy of the plan and the
13 Consultant's recommendations regarding the plan to the Attorney General.

14 30. The County will confer with the Consultant on the accessibility of its polling
15 places and the methods necessary for the County to utilize in order to select more accessible
16 sites. The Attorney General's Office may contact the Consultant to obtain updates on the
17 County's progress and compliance with this Agreement.

18 31. The County will ensure that the Consultant surveys the sites used by the County
19 as polling places during the February 2008 Primary Election and each of the four elections
20 referenced in the timetable set forth in paragraph 23 of this Agreement, evaluates the County's
21 compliance with the provisions of the Agreement, and issues reports regarding the results of his
22 or her surveys and evaluation. In conducting the surveys of the County's polling places during
23 the elections covered under this Agreement, the Consultant will use the Checklist defined in
24 paragraph 18.

25 32. The County will ensure that the Consultant's surveys of Kern County's polling
26 sites will be conducted as follows:

27 (a) With respect to the California Primary Election to be held in February
28 2008, the Consultant will survey all polling sites designated in Exhibit C that will be used for

1 polling sites during the February 2008 California Primary Election and any new polling sites
2 designated by the County for the February 2008 California Primary Election. For purposes of
3 this subdivision (a) of paragraph 32 only, the County will be required to survey any new polling
4 sites designated by the County that are located in the cities of Arvin, Bakersfield, Buttonwillow,
5 Delano, Frazier Park, Lamont, McFarland, Mojave, Shafter and Wasco.

6 (b) With respect to the California Primary Election to be held in June 2008,
7 the Consultant will survey all polling sites that were not substantially compliant during the
8 February 2008 California Primary Election, all polling sites designated in Exhibit D that will be
9 used for polling sites during the June 2008 California Primary Election, and any new polling
10 sites designated by the County for the June 2008 California Primary Election.

11 (c) If all of the County's polling sites are not substantially compliant by the
12 November 2008 California General Election, then the Consultant will survey all polling sites
13 designated by the County during that election and each subsequent election that is referenced in
14 the timetable set forth in paragraph 23 of this Agreement until the County meets all of its
15 obligations under this Agreement. In conducting the surveys, the Consultant will survey all
16 polling sites that were not fully accessible in the immediately preceding statewide election and
17 any new polling sites designated by the County. After the initial surveys described in
18 subdivisions (a) and (b) of this paragraph are conducted, if a polling site that was inaccessible in
19 any preceding election becomes substantially compliant through the procedures set forth in
20 paragraph 24(b) of this Agreement, then the Consultant is not required to survey that polling site
21 in any subsequent elections. Notwithstanding these provisions, the parties may mutually agree,
22 in writing, to survey a smaller representative sample of the County's polling places.

23 33. The County will cooperate with the Consultant in his efforts to survey Kern
24 County's polling sites under the terms of this Agreement, and will allow the Consultant to:

25 (a) Interview any person who has responsibilities related to ensuring that
26 polling places used by the County are accessible. The County will provide suitable facilities and
27 will arrange for such interviews to be conducted under conditions satisfactory to the Consultant.

28 (b) Request and obtain access to the records, files, statistics, reports, and other

1 documents maintained by the County to the extent that such information is not privileged or
2 confidential and is directly related to the matters that are set forth in this Agreement. The
3 Consultant may obtain copies of all such relevant records, files, and papers.

4 (c) Request and obtain the County's cooperation in accessing public and
5 private property used as polling places to conduct surveys or inspections to determine whether
6 those properties are accessible.

7 34. In conducting the surveys required by this Agreement, the County will allow the
8 Consultant to use professional surveyors or other persons whom the Consultant deems to have
9 sufficient knowledge of state and federal accessibility laws to conduct the polling site surveys on
10 Election Day. All persons conducting the survey under the direction of the Consultant will use
11 the Checklist to assess the polling sites' accessibility. Those completed Checklists will be
12 returned to the Consultant who will then provide copies of those Checklists, as well as copies of
13 the Checklists that the Consultant completes, to the Attorney General and the County within
14 sixty days of each election.

15 35. The County will cooperate with the Consultant and take all appropriate steps to
16 ensure that within sixty (60) days of each survey conducted during the February 2008 California
17 Primary Election and the elections that are referenced in the timetable set forth in paragraph 23
18 of this Agreement, that the Consultant prepares a report that will be sent to the Attorney General
19 and the County. The Consultant's report will assess the County's compliance with the
20 implementation of the County's obligations under this Agreement and the results of the survey at
21 issue. The report will include, but is not limited to, an analysis of the results of the survey; a
22 breakdown of the violations per polling place for each category surveyed (i.e., parking, signage,
23 exterior access, doors and hallways, voting booths, and ramps); a description of the nature of the
24 violation; the percentage of overall compliance county-wide; the need, if any, for additional
25 improvements; an analysis of the County's search for new polling sites, and any additional steps
26 that should be taken to ensure that the polling places used for the next election are accessible.

27 36. Upon submission of the Consultant's report, the Attorney General will review the
28 report to determine whether the County is complying with the obligations set forth in this

1 Agreement. If at any time the Attorney General determines that the County is not complying
2 with its obligations, the Attorney General will so notify the County and the County will be given
3 a reasonable amount of time not to exceed sixty (60) days to address the issues identified by the
4 Attorney General. If the Attorney General determines that the County has not remedied the
5 deficiencies identified by the Attorney General with respect to the County's obligations under
6 this Agreement, the Attorney General may file a motion to enforce the Agreement with the
7 Court, using the briefing schedules set forth in Code of Civil Procedure section 1005. The scope
8 of the motion hearing, which may be an evidentiary hearing depending on the circumstances,
9 will be to determine whether the County has met its obligations as set forth in this Agreement. If
10 the Court determines that the County has not performed its obligations as set forth in this
11 Agreement, the Court will issue whatever orders it deems proper to effectuate the terms of this
12 Agreement. Nothing in this Agreement limits the parties from seeking all available remedies
13 under Code of Civil Procedure section 664.6.

14 37. Within thirty (30) days of the execution of this Agreement, the County will pay to
15 the Attorney General costs in the amount of \$50,000.00 for all costs the Attorney General has
16 incurred to date in *People v. County of Kern et. al.*, Kern County Superior Court Case Number S-
17 1500-CV 256653 LSE. This sum shall be paid by submitting to counsel for the Attorney General
18 a check made payable to the "California Department of Justice." These costs will be deposited
19 in the Department of Justice Public Rights Division Law Enforcement Special Fund that is
20 established under Government Code section 12530. Each party will bear their own attorneys'
21 fees incurred in this action.

22 38. The parties jointly stipulate and agree that this action, *People v. County of Kern*,
23 Kern County Case No. S-1500-CV 256653 LSE, will be stayed, except for purposes of enforcing
24 the Agreement and/or seeking all appropriate orders or a judgment to enforce this Agreement
25 under Code of Civil Procedure section 664.6, until such time as the County fulfills its obligations
26 under this Agreement.

27 39. If all of the County's polling sites are in substantial compliance and/or the
28 County's polling sites are fully accessible under the provisions of paragraphs 20 and 21 of this

1 Agreement at any time prior to March 31, 2011, then the Attorney General and the County may
2 jointly stipulate in writing that the County has no further obligations under this Agreement. The
3 Attorney General's consent to this stipulation will not be unreasonably withheld. If the parties
4 cannot agree to the stipulation within forty-five (45) days of the County's written request to
5 terminate the Agreement, then the County may make a motion with the Court for good cause
6 shown that the Agreement should be terminated.

7 **IT IS SO STIPULATED.**

8
9 Dated: COUNTY OF KERN

10 By: _____
11 DON MABEN, Chairman,
12 Kern County Board of Supervisors

13
14 Dated:

15 By: _____
16 ANN BARNETT, In her Official
17 Capacity as County Clerk and
18 Registrar of Voters of the County of
19 Kern

20 Dated:

21 EDMUND G. BROWN JR.
22 Attorney General of the State of California
23 JAMES M. HUMES
24 Chief Deputy Attorney General
25 TOM GREENE
26 Chief Assistant Attorney General
27 LOUIS VERDUGO, JR.
28 Senior Assistant Attorney General
ANGELA SIERRA
Supervising Deputy Attorney General
NANCY A. BENINATI
Deputy Attorney General

By: _____
JAMES M. HUMES
Chief Deputy Attorney General

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APPROVED AS TO FORM AND CONTENT:

Dated: B.C. BARMANN, SR., COUNTY COUNSEL

By: _____
JENNIFER L. THURSTON
Deputy County Counsel

Attorneys for the County of Kern and Ann
Barnett in her Official Capacity as County
Clerk and Registrar of Voters of the County of
Kern

Dated: EDMUND G. BROWN JR.
Attorney General of the State of California
JAMES M. HUMES
Chief Deputy Attorney General
TOM GREENE
Chief Assistant Attorney General
LOUIS VERDUGO, JR.
Senior Assistant Attorney General
ANGELA SIERRA
Supervising Deputy Attorney General

By: _____
NANCY A. BENINATI
Deputy Attorney General

Attorneys for Plaintiff/Petitioner The People
of the State of California

ORDER

This action will be stayed during the term that this Agreement is in effect, or until such time that the County fulfills its obligations under this Agreement. The stay of this action will not affect the parties’ ability to file motions with the Court or to obtain orders or a judgment to enforce this Agreement under Code of Civil Procedure section 664.6 as provided in this Agreement. The Court will retain jurisdiction of this action to enforce the terms and obligations of the Agreement and until final performance by the County. Any and all applicable statutes, rules, or court orders affecting timely prosecution of this action, including the five-year dismissal statute set forth in Code of Civil Procedure section 583.310, will be tolled.

IT IS SO ORDERED.

Dated:

JUDGE OF THE SUPERIOR COURT