

MEMORANDUM

December 22, 2008

To: Official Committee of Unsecured Creditors (the “Committee”) of VeraSun Energy Corporation, et al. (the “Debtors”)
From: Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”)
Re: VeraSun Energy Corporation, et al. – Summary of Recently Filed Pleading

Notice of Presentment of Order Approving Stipulation Among VeraSun Marketing, LLC, and Kroger Limited Partnership I Regarding Mutual Agreement to Terminate Certain Contracts [Docket No. 319] (the “Stipulation”)

By the Stipulation, VeraSun Marketing LLC (“VeraSun Marketing”) and Kroger Limited Partnership I (“Kroger”) have agreed, subject to Bankruptcy Court approval, to terminate a two-year E-85 fuel supply agreement (the “Supply Agreement”), as such Supply Agreement had been extended and expanded under a series of amendments (collectively, the “Kroger Agreements” and together with the Supply Agreement, “Agreements”).

In addition, by the Stipulation, VeraSun Marketing and Kroger have agreed, subject to Bankruptcy Court approval, (i) that the foregoing termination shall be effective as of November 19, 2008, (ii) to release and waive any and all claims they may have against each other that arise out of the termination of the Agreements, and (iii) that Kroger is free to acquire fuel from any source, on such terms as Kroger sees fit, without regard to the Agreements.