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 10 *Substances Control*

11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13
 14 **CALIFORNIA DEPARTMENT OF**
 15 **TOXIC SUBSTANCES CONTROL,**
 16 Plaintiff,
 17 v.
 18 **PORCELAIN METALS**
 19 **CORPORATION, a dissolved**
 20 **Kentucky corporation,**
 21 Defendant.

Case No.: 2:16-cv-09308-GW-E
~~PROPOSED~~ CONSENT DECREE
 BETWEEN PLAINTIFF AND
 DEFENDANT PORCELAIN METALS
 CORPORATION; EXHIBIT

22
 23 **I. INTRODUCTION**

24 1. Plaintiff the California Department of Toxic Substances Control
 25 (“DTSC”¹ or “PLAINTIFF”) filed a Complaint in this matter pursuant to the
 26 Comprehensive Environmental Response, Compensation, and Liability Act
 27

28 ¹ Please refer to section V, below, for the list of defined terms.

1 (“CERCLA”), 42 U.S.C. § 9601 et seq. against Defendant Porcelain Metals
2 Corporation (“PORCELAIN METALS”). In the Complaint, PLAINTIFF seeks to
3 recover its response costs under CERCLA section 107(a), 42 U.S.C. § 9607(a)
4 (“RESPONSE COSTS”), related to releases and threatened releases of hazardous
5 substances at and emanating from the properties located at 6904 East Slauson
6 Avenue, City of Commerce, County of Los Angeles, California, identified by
7 Assessor’s Parcel Number (APN) 6356-017-028 (“LOT 2” or the “PROPERTY”),
8 and 6840 East Slauson Avenue, identified by APN 6356-017-027 (“LOT 1”). LOT
9 1, LOT 2, and the areal extent of contamination at and emanating from those lots is
10 collectively the “SITE.” Additionally, PLAINTIFF seeks declaratory relief under
11 CERCLA section 113(g)(2), 42 U.S.C. § 9613(g)(2) that PORCELAIN METALS is
12 jointly and severally liable for future response costs to be incurred by PLAINTIFF
13 to address releases and threatened releases of hazardous substances at the SITE.

14 **II. STATEMENT OF RELEVANT FACTS**

15 2. PORCELAIN METALS is an administratively dissolved Kentucky
16 corporation whose powers, rights, and privileges are forfeited in California and in
17 Kentucky, except as necessary to wind up and liquidate its business and affairs.
18 PORCELAIN METALS’ powers, rights, and privileges to wind up and liquidate its
19 business and affairs in California will, upon revivor, include the right to sell the
20 PROPERTY.

21 3. PORCELAIN METALS is the current owner of the PROPERTY (LOT
22 2).

23 4. From the 1940s until 1990, the California Metal Enameling Company
24 (“CAMEO”) engaged in the manufacturing of porcelain-enameled coated products
25 on LOTS 1 and 2, and PLAINTIFF has alleged in the Complaint that those
26 operations resulted in the release of hazardous substances into the soil and
27 groundwater.

28

1 5. Kenfield Corporation acquired LOTS 1 and 2 in 1952, and merged into
2 CAMEO in 1984. CAMEO became the owner of LOTS 1 and 2 as the corporate
3 successor by merger to Kenfield Corporation.

4 6. CAMEO merged into PORCELAIN METALS in 1990.

5 7. Through its merger with CAMEO, PORCELAIN METALS became the
6 owner of LOTS 1 and 2 and the owner and operator of the porcelain-enameling
7 facility. While record title to the PROPERTY remains in the name of Kenfield
8 Corporation, PORCELAIN METALS is the owner of the PROPERTY as successor
9 by merger to Kenfield Corporation and CAMEO. PORCELAIN METALS has
10 alleged that it has received significant expressions of interest from potential
11 purchasers of Lot 2.

12 8. Materials known to have been used in the manufacture of porcelain-
13 enameled metal products at LOTS 1 and 2 include, but are not limited to: chromic
14 acid, alkaline potassium solutions, sulfuric acid, sulfates, potassium dichromate,
15 lead, zinc, cadmium, and nickel.

16 9. In or around June 1992, in connection with termination of its business in
17 California, PORCELAIN METALS hired National Environmental Consultants, Inc.
18 (“NECI”) to manage cleanup and demolition activities at the SITE. Demolition of
19 all structures at the SITE was completed in December 1992.

20 10. Prior to demolition, NECI found hazardous concentrations of chromium,
21 lead, cadmium, nickel, and zinc in waste samples collected from the surfaces of
22 machinery, and in trenches and pits at the SITE, among other places. Concrete
23 sampling showed that chromium had been absorbed in the concrete at the “Pit 2”
24 area of the SITE.

25 11. In 1993, PORCELAIN METALS retained NECI to perform a phase II
26 environmental investigation to investigate contamination underneath certain areas
27 of LOTS 1 and 2, identify any chemicals of concern, and define the vertical and
28 lateral migration of any chemicals of concern underneath LOTS 1 and 2. NECI

1 found that the soil in portions of the SITE was contaminated with hexavalent
2 chromium, which had migrated vertically and laterally to an extent that was
3 estimated by NECI.

4 12. DTSC began oversight of the investigation and cleanup at the SITE
5 pursuant to a voluntary cleanup agreement with PORCELAIN METALS executed
6 in July 1995.

7 13. Pursuant to the voluntary cleanup agreement, PORCELAIN METALS
8 conducted investigation and/or cleanup activities at the SITE. DTSC issued a no
9 further action letter for LOT 1 in 2001. PORCELAIN METALS sold LOT 1 that
10 same year, and the new owner subsequently redeveloped LOT 1. PORCELAIN
11 METALS ceased investigation and cleanup activities at LOT 2 shortly after the sale
12 of LOT 1. PORCELAIN METALS alleges that it was financially unable to
13 continue the work on LOT 2.

14 14. In April 2006, DTSC terminated the cleanup agreement because
15 PORCELAIN METALS had ceased investigation and cleanup activities, and DTSC
16 determined that a threat to human health and the environment existed as a result of
17 hexavalent chromium and other hazardous substances in the groundwater and soil.

18 15. In June 2006, DTSC issued Imminent and Substantial Endangerment
19 Determination and Order, and Remedial Action Order, Docket No. IS&E 05/06 –
20 015 (“IS/E Order”) naming PORCELAIN METALS as a respondent. The IS/E
21 Order required PORCELAIN METALS to implement removal actions, complete a
22 remedial investigation/feasibility study, prepare a remedial action plan or removal
23 action workplan, and comply with related legal requirements.

24 16. In 2007, DTSC determined that PORCELAIN METALS was out of
25 compliance with the IS/E Order because of the ongoing presence of hazardous
26 substances at the LOT 2 SITE, including hexavalent chromium in groundwater at
27 concentrations exceeding the drinking water maximum contaminant level (“MCL”).
28

1 17. DTSC determined that additional investigation and other response
2 actions, including long term groundwater monitoring, would be required at the LOT
3 2 SITE to address the release and threatened release of hexavalent chromium and
4 other hazardous substances migrating through the soil and groundwater.

5 18. In 2007, DTSC prepared a time critical removal action workplan to
6 address the removal of soil contaminated with chromium and hexavalent chromium.
7 In 2008, DTSC revised that removal action workplan and implemented it through a
8 contract with URS Corporation.

9 19. PORCELAIN METALS alleges that it also went out of business in
10 Kentucky, and its operations and facilities there were closed and liquidated. The
11 former owner of PORCELAIN METALS, John H. McBride, died in 2011. The
12 person now with corporate authority to act on behalf of PORCELAIN METALS is
13 Carolyn M. McBride, who is the widow of Mr. McBride and the Sole Officer and
14 Registered Agent of PORCELAIN METALS in Kentucky. PORCELAIN
15 METALS was administratively dissolved by the Kentucky Secretary of State in
16 2015 because it failed to file an annual report.

17 20. From 2010 through 2015, DTSC conducted extensive soil and
18 groundwater investigations at the LOT 2 SITE to further identify areas of
19 environmental concern. DTSC completed a series of removal actions to remove
20 hazardous substances that posed a threat to human health and the environment.

21 21. DTSC excavated soils contaminated with hazardous substances that
22 posed a threat to groundwater, including, but not limited to, chromium, hexavalent
23 chromium, cadmium, lead, and arsenic. These activities have lowered
24 concentrations of hazardous chemicals, removed contaminated soils, and
25 significantly reduced or mitigated impacts to groundwater.

26 22. A water production well, "Commerce 3D," was constructed in 1946 at
27 5960 Garfield Avenue, City of Commerce (APN 6356-017-900), which is adjacent
28 to the southerly lot line of LOT 2. The well parcel was formerly owned by Park

1 Water Company and was conveyed to the City of Commerce in 1978. The well
2 was used for drinking water purposes until it was removed from service in 2001,
3 when levels of chromium, hexavalent chromium, and volatile organic compounds
4 (“VOCs”) were detected in well water samples. DTSC coordinated with the City of
5 Commerce to remove the well from service to reduce the risk of human exposure
6 and reduce the need for groundwater remediation.

7 23. DTSC has incurred, and expects to continue to incur, costs of “response,”
8 as that term is defined in CERCLA section 101(25), 42 U.S.C. § 9601(25), in
9 taking actions at or related to the contamination at the SITE. The response actions
10 include, but are not limited to, the following activities:

- 11 a. Sampling and analysis;
- 12 b. Performing inspections and preparing reports;
- 13 c. Reviewing work plans for investigation and remediation;
- 14 d. Conducting SITE visits and overseeing field work;
- 15 e. Meeting with the potentially responsible party(ies);
- 16 f. Complying with the California Environmental Quality Act; and
- 17 g. Preparing decision documents regarding SITE cleanup and
18 monitoring and implementing additional response actions
19 concerning the SITE.

20 24. PLAINTIFF’s response actions were required to remove the hazardous
21 substances released and threatened to be released at the SITE. DTSC’s response
22 actions were not inconsistent with the National Contingency Plan, 40 C.F.R. Part
23 300.

24 25. As of March 2018, PLAINTIFF’s unreimbursed RESPONSE COSTS
25 related to the SITE exceeded \$3.5 million. PLAINTIFF will continue to incur
26 RESPONSE COSTS related to the LOT 2 SITE.

27 26. On November 23, 2016, DTSC recorded a statutory lien in the amount of
28 \$2,925,211.32 on the PROPERTY in the Los Angeles County Recorder’s Office.

1 27. PORCELAIN METALS has failed to pay property taxes to the Los
2 Angeles County Tax Collector. The amount owed to the Tax Collector amounted
3 to \$137,107.71 as of August 31, 2018. The Tax Collector scheduled a closed bid
4 auction to sell the PROPERTY for tax arrearage on May 31, 2018, but that sale was
5 taken off calendar due to the pendency of this settlement and Consent Decree.

6 28. PORCELAIN METALS' corporate status in California has been forfeited
7 by the Franchise Tax Board ("FTB"), and PORCELAIN METALS shall pay the
8 taxes and penalties assessed by the FTB and anticipates receiving a certificate of
9 good standing within six to eight weeks of the lodging of this Consent Decree.

10 29. PORCELAIN METALS has been administratively dissolved in
11 Kentucky.

12 30. PORCELAIN METALS has alleged that its only assets are the
13 PROPERTY and general liability insurance policies, and that it now seeks to settle
14 this action on the terms set forth herein. By signing this Consent Decree,
15 PORCELAIN METALS affirms under penalty of perjury that the financial
16 information provided to DTSC is true and correct. In making this determination of
17 PORCELAIN METALS' finances and in entering into this settlement, DTSC has
18 relied on the financial information provided by PORCELAIN METALS.

19 31. PLAINTIFF and PORCELAIN METALS ("the PARTIES") agree, and
20 this Court, by entering this Consent Decree, finds, that: this Consent Decree has
21 been negotiated by the PARTIES in good faith; settlement of this matter will avoid
22 expensive, prolonged, and complicated litigation between the PARTIES; and this
23 Consent Decree is fair, reasonable, in the public interest, and consistent with the
24 purpose of CERCLA.

25 **THEREFORE**, the Court, with the consent of the PARTIES to this
26 Consent Decree, hereby **ORDERS, ADJUDGES, AND DECREES**, as follows:

27 ///

28 ///

1 **III. JURISDICTION**

2 32. The Court has subject matter jurisdiction over the matters alleged in this
3 action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367(a), and CERCLA section
4 113(b), 42 U.S.C. § 9613(b), and personal jurisdiction over each of the PARTIES.
5 Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b) and CERCLA
6 section 113(b), 42 U.S.C. § 9613(b). Solely for the purposes of this Consent
7 Decree and the underlying Complaint, PORCELAIN METALS waives all
8 objections and defenses that PORCELAIN METALS may have to the jurisdiction
9 of the Court or to venue in this district.

10 33. PORCELAIN METALS consents to, and shall not challenge, the terms of
11 this Consent Decree and this Court’s jurisdiction to enter and enforce this Consent
12 Decree.

13 34. The Court shall retain jurisdiction over this matter for the purpose of
14 interpreting and enforcing the terms of this Consent Decree, if necessary.

15 **IV. SETTLEMENT OF DISPUTED CLAIMS**

16 35. This Consent Decree resolves PLAINTIFF’s claims against
17 PORCELAIN METALS in the above-captioned action. PLAINTIFF agrees to
18 settlement of PORCELAIN METALS’ liability in this action in exchange for
19 consideration from PORCELAIN METALS, including payment by PORCELAIN
20 METALS to reimburse a portion of PLAINTIFF’s RESPONSE COSTS incurred
21 and to be incurred at, or in connection with, releases and threatened releases of
22 hazardous substances at the SITE. THE PARTIES’ mutual releases of liability and
23 the consideration for those releases are set forth herein in detail below.

24 36. Except as set forth in Paragraphs 19 and 26-30 above, nothing in this
25 Consent Decree shall be construed as an admission by PORCELAIN METALS of
26 any issue of fact. Nothing in this Consent Decree shall be construed as an
27 admission by PORCELAIN METALS of any issue of law or any violation of law.
28

1 37. Upon approval and entry of this Consent Decree by the Court, this
2 Consent Decree shall constitute a final judgment between the PARTIES under Fed.
3 R. Civ. P. 54 and 58.

4 **V. DEFINITIONS**

5 38. Unless otherwise expressly provided herein, terms used in this Consent
6 Decree that are defined in CERCLA, or in regulations promulgated under
7 CERCLA, shall have the meaning assigned to them therein. Whenever terms listed
8 below are used in this Consent Decree, the definitions below shall apply.

9 39. “DAY” shall mean a calendar day. In computing any period of time
10 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or
11 federal or State holiday, the period shall run until the close of business of the next
12 day that is not a Saturday, Sunday, or federal or State holiday.

13 40. “DTSC” shall mean the California Department of Toxic Substances
14 Control, and its predecessors and successors. DTSC is a public agency of the State
15 of California organized and existing under and pursuant to California Health and
16 Safety Code § 58000 et seq. Under California law, DTSC is the state agency
17 responsible for determining whether there has been a release and/or threatened
18 release of hazardous substances into the environment, and for determining the
19 actions to be taken in response thereto.

20 41. “EFFECTIVE DATE” shall mean the date the Court enters an Order
21 approving this Consent Decree.

22 42. “FAIR MARKET VALUE” shall mean the highest price on the date of
23 valuation that would be agreed to by a seller, being willing to sell but under no
24 particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being
25 ready, willing, and able to buy but under no particular necessity for so doing, each
26 dealing with the other with full knowledge of all the uses and purposes for which
27 the property is reasonably adaptable and available.

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1 43. "FEDERAL INSURANCE COMPANY" shall mean Federal Insurance
2 Company (in its capacity as the insurer of PORCELAIN METALS at the SITE) and
3 its parents, managers, managing agents, representatives, affiliates, successors,
4 predecessors, heirs, legatees, and assigns.

5 44. "LOT 2 SITE" shall mean the property located at 6904 East Slauson
6 Avenue, City of Commerce, County of Los Angeles, California, identified by
7 Assessor's Parcel Number (APN) 6356-017-028 ("LOT 2" or the "PROPERTY"),
8 and the areal extent of contamination at and emanating from that lot, including
9 contamination in the soil or groundwater.

10 45. "NET SALE PROCEEDS" shall mean the gross sale price of the
11 PROPERTY, less commercially reasonable brokerage commissions, closing costs,
12 and marketing expenses.

13 46. "PARTIES" shall mean PLAINTIFF and PORCELAIN METALS, and
14 the term "PARTY" shall refer to either PLAINTIFF or PORCELAIN METALS.

15 47. "PLAINTIFF" shall mean DTSC.

16 48. "PROPERTY" shall mean the real property owned by PORCELAIN
17 METALS, located as 6904 East Slauson Avenue, City of Commerce, County of
18 Los Angeles, California, identified by Assessor's Parcel Number (APN) 6356-017-
19 028, and referred to as LOT 2.

20 49. "RESPONSE COSTS" shall mean all costs of "removal," "remedial
21 action," or "response" as those terms are defined by CERCLA § 101, 42 U.S.C. §
22 9601, related to the disposal, release, and/or threatened release of hazardous
23 substances related to the SITE, including into soil and groundwater.

24 50. "SITE" shall mean the properties located at 6904 East Slauson Avenue,
25 City of Commerce, County of Los Angeles, California, identified by Assessor's
26 Parcel Number (APN) 6356-017-028 ("LOT 2" or the "PROPERTY"); and 6840
27 East Slauson Avenue, identified by APN 63560-017-027 ("LOT 1") and the areal
28

1 extent of contamination at and emanating from those lots, including contamination
2 in the soil or groundwater.

3 **VI. PORCELAIN METALS' SETTLEMENT OBLIGATIONS**

4 51. PORCELAIN METALS shall pay to DTSC within sixty (60) DAYS of
5 the EFFECTIVE DATE an amount equal to \$1,865,258.61, the source of which
6 will be insurance proceeds from a settlement to be entered into between
7 PORCELAIN METALS and its insurer, Federal Insurance Company, prior to the
8 EFFECTIVE DATE.

9 52. \$50,000 of the payment described in Paragraph 51 above shall be
10 retained by PORCELAIN METALS for the sole purposes of paying current and
11 future real property taxes assessed by the Los Angeles County Tax Collector to
12 PORCELAIN METALS for the period from July 1, 2018 to June 30, 2019 and
13 continuing up to the date of the closing of the sale of the PROPERTY. After the
14 sale of the PROPERTY, any remaining balance from the retained \$50,000 shall be
15 paid to DTSC.

16 53. PORCELAIN METALS shall pay to the Los Angeles County Tax
17 Collector prior to or within thirty (30) DAYS of the EFFECTIVE DATE the
18 amount needed to satisfy due and unpaid real property taxes on the PROPERTY
19 through June 30, 2018 (the "Catch-Up Property Tax Payment"). The Catch-Up
20 Property Tax Payment is presently estimated to be an amount equal to \$137,107.71
21 plus a \$1,183.16 penalty for each month that past due real property taxes remain
22 unpaid after August 31, 2018.

23 54. PORCELAIN METALS shall pay DTSC the NET SALE PROCEEDS
24 for the sale of the PROPERTY, as set forth in Paragraph 56 below.

25 55. Revival of PORCELAIN METALS:

- 26 a. PORCELAIN METALS shall, prior to or within ninety (90)
27 DAYS of the EFFECTIVE DATE:
28

- i. Pay, or cause to be paid to the FTB, all delinquent balances, including penalties, fees, and interest;
- ii. Take such additional steps as may be required by the FTB to revive itself, including, but not limited to: (1) filing all delinquent tax returns; (2) submitting a revivor request form; and
- iii. Taking any other steps necessary to return to, or maintain, “good standing” with the California Secretary of State and the FTB sufficient to allow PORCELAIN METALS to sell real property in California.

56. Sale of the PROPERTY:

- a. Until the PROPERTY is sold for FAIR MARKET VALUE, PORCELAIN METALS shall use commercially reasonable efforts to sell the PROPERTY for FAIR MARKET VALUE and shall incur only commercially reasonable costs of sale for the sale of the PROPERTY.
- b. Prior to entering into or modifying (i) any listing agreement for the PROPERTY, or (ii) any purchase and sale agreement for the PROPERTY (regardless of whether procured by a broker under a listing agreement), PORCELAIN METALS shall provide DTSC a copy of the proposed agreement. Within fifteen (15) DAYS of receipt of the agreement, DTSC may approve the agreement or object to it on the grounds that: (1) any costs or commissions to be deducted from the gross sale price pursuant to the agreement or other terms and conditions are not commercially reasonable; or (2) that the agreement does not provide for FAIR MARKET VALUE. DTSC must state with specificity the basis of any objection. PORCELAIN METALS may proceed to enter into the

1 agreement if no objection is timely received. If such an objection
2 is made, the PARTIES will promptly confer to determine if the
3 objection can be satisfactorily resolved. If resolved,
4 PORCELAIN METALS may proceed to enter into the agreement
5 consistent with the resolution. PORCELAIN METALS may not
6 enter into the agreement until DTSC has withdrawn its objection,
7 the objection has been resolved between the PARTIES, or the
8 dispute has been resolved by this Court upon a noticed motion by
9 either PARTY.

10 c. For purposes of this Consent Decree, PORCELAIN METALS
11 shall be deemed to have made commercially reasonable efforts to
12 sell the PROPERTY if it does both of the following: 1) lists the
13 PROPERTY for sale with a licensed commercial real estate
14 broker at FAIR MARKET VALUE within twenty-one (21)
15 DAYS of the later of (i) the EFFECTIVE DATE, or (ii) the date
16 that PORCELAIN METALS may enter into a listing agreement
17 pursuant to subparagraph (b) of this Paragraph; and 2) enters into
18 a purchase and sale agreement promptly following approval of
19 such an agreement by DTSC, or following resolution of a dispute
20 regarding such an agreement by this Court under subparagraph (b)
21 of this Paragraph.

22 d. PORCELAIN METALS shall be obligated to submit to DTSC for
23 approval any unconditional bona fide offer to purchase the
24 PROPERTY in as-is condition, and without representations or
25 warranties, for FAIR MARKET VALUE.

26 e. In view of the environmentally impaired condition of the
27 PROPERTY, PLAINTIFF will timely respond to inquiries from
28 any interested purchasers regarding the possibility of a

1 prospective purchaser agreement or other limitation on liability.
2 PLAINTIFF and PORCELAIN METALS agree and acknowledge
3 that the FAIR MARKET VALUE of the PROPERTY may be
4 affected by, among other things, the environmental condition of
5 the PROPERTY and the potential environmental liability of an
6 interested purchaser.

- 7 f. Any purchase agreement and escrow instructions for the sale of
8 the PROPERTY shall require the escrow agent to pay DTSC all
9 of the NET SALE PROCEEDS.
- 10 g. Any purchase agreement shall require the purchaser, after closing
11 of the purchase, to execute and to record, within thirty (30) DAYS
12 of request by DTSC, a Land Use Covenant approved by DTSC, if
13 the remedy selected for the PROPERTY in an approved final
14 Remedial Action Plan or Removal Action Plan approved by
15 DTSC requires the recording of a Land Use Covenant.
- 16 h. Any purchase and sale agreement shall require the purchaser to
17 allow DTSC access to the PROPERTY to perform response
18 actions.
- 19 i. Within ten (10) DAYS of opening escrow to sell the PROPERTY,
20 PORCELAIN METALS shall notify DTSC in writing and shall
21 provide DTSC with a copy of the agreement to sell the
22 PROPERTY and escrow agreement. As early as possible after
23 opening escrow, PORCELAIN METALS shall request a
24 preliminary Seller's Estimated Settlement Statement from the
25 escrow agent and provide that statement to DTSC.
- 26 j. DTSC presently has a statutory lien on the PROPERTY, recorded
27 as instrument number 20161476375 in the Los Angeles County
28 Recorder's Office, a copy of which is attached to this Consent

1 Decree as Exhibit A. PORCELAIN METALS agrees not to
2 contest the lien on the PROPERTY. Unless DTSC has objected
3 to the sale in accordance with subparagraph (b) of this Paragraph
4 and the objection remains unresolved between the PARTIES or
5 by the Court, on or before the DAY appointed for the close of
6 escrow, DTSC will execute and provide to the escrow agent a
7 release of the lien (in form and substance acceptable for issuance
8 of title insurance without exclusion for the lien), which the escrow
9 agent shall record with the County Recorder at closing.

10 k. Within three (3) DAYS of escrow closing, the escrow agent shall
11 pay DTSC the funds specified in subparagraph (f) of this
12 Paragraph.

13 l. Within ten (10) DAYS of the close of escrow, PORCELAIN
14 METALS or the escrow agent shall provide a copy of the Seller's
15 Final Settlement Statement showing the gross sale price, and each
16 item deducted from same in calculating the NET SALE
17 PROCEEDS remitted to DTSC.

18 m. PORCELAIN METALS may, upon thirty (30) DAYS notice to
19 DTSC, and if DTSC does not object within that 30 DAY period,
20 execute and record a termination of the existing recorded
21 Remediation Easement Agreement in favor of PORCELAIN
22 METALS with respect to LOT 1.

23 n. Prior to the close of escrow, PORCELAIN METALS or the
24 escrow agent shall provide to DTSC a copy of the Seller's
25 Estimated Settlement Statement together with all supporting
26 documentation for the sale and the calculation of the NET SALE
27 PROCEEDS. Both PORCELAIN METALS' and DTSC's
28

1 approval of the Seller's Estimated Settlement Statement shall be
2 required prior to closing.

- 3 o. PORCELAIN METALS will, within thirty (30) DAYS, record a
4 Land Use Covenant provided by DTSC, if: 1) the remedy for the
5 LOT 2 SITE selected in an approved final Remedial Action Plan
6 or Removal Action Plan approved by DTSC requires the
7 recording of a Land Use Covenant; and 2) PORCELAIN
8 METALS still owns the PROPERTY.

9 57. PORCELAIN METALS' payment obligations under this Consent Decree
10 shall be deemed to have been satisfied in full upon: (1) Delivery to DTSC of the
11 payments due under Paragraphs 51, 52 (if any), 54, and 56.f; (2) Delivery to the Los
12 Angeles County Tax Collector of payments due under Paragraphs 52 (if any is
13 required) and 53; and (3) Delivery to the FTB of the payments due under Paragraph
14 55. The payments specified in Paragraphs 51, 52, 54, and 56.f shall be made by
15 certified or cashier's check made payable to California Department of Toxic
16 Substances Control, and shall bear on its face both the docket number of this
17 proceeding and the phrase "Site Code 300546-SM."

- 18 a. The payments shall be sent to:

19 Accounting Office, MS-21A
20 Department of Toxic Substances Control
21 P.O. Box 806
22 Sacramento, CA 95812-0806

- 23 b. A copy of the check shall be mailed to:

24 Robin McGinnis
25 Senior Staff Counsel
26 Department of Toxic Substances Control
27 Office of Legal Counsel, MS-23A
28 1001 I Street
Sacramento, CA 95814

Or e-mailed to robin.mcginnis@dtsc.ca.gov in .pdf format.

And to:

1 John W. Everett
2 Deputy Attorney General
3 Department of Toxic Substances Control
4 600 W. Broadway, Suite 1800
5 San Diego, CA 92101

6 Or e-mailed to john.everett@doj.ca.gov in .pdf format.

7 58. This Consent Decree is conditioned upon full performance of
8 PORCELAIN METALS' obligations in this Consent Decree. If the requirements
9 of this Consent Decree are not met, then this Consent Decree shall be voidable at
10 the discretion of DTSC, and DTSC may proceed to litigate the Complaint against
11 PORCELAIN METALS. If DTSC voids this Consent Decree, then the entire
12 Consent Decree shall be void.

13 **VII. ACCESS TO INFORMATION AND THE PROPERTY**

14 59. Within thirty (30) DAYS of the EFFECTIVE DATE, PORCELAIN
15 METALS shall provide to DTSC copies of any and all unprivileged records,
16 documents, and information within its possession or control, or that of its agents,
17 relating to: (a) the ownership, operation, or control of LOT 1 and LOT 2; (b) the
18 purchase, storage, use, handling, generation, treatment, transportation, or disposal
19 of hazardous substances in connection with the SITE; (c) disposals, releases, and/or
20 threatened releases of hazardous substances at the SITE, including the soil and
21 groundwater; and (d) removal, remedial, or response actions conducted by any
22 person at the SITE. If PORCELAIN METALS believes it already produced all
23 such documents, it may comply with this Paragraph by sending DTSC a signed
24 letter representing and warranting that it has already produced the information
25 required by this Paragraph. Sending such a letter shall not absolve PORCELAIN
26 METALS of its obligations under this Paragraph.

27 60. If after the EFFECTIVE DATE, PORCELAIN METALS obtains or
28 discovers any records, documents, or information described in Paragraph 59 not
previously provided to DTSC, PORCELAIN METALS agrees to provide DTSC
copies of the additional records, documents, or information within ten (10) DAYS

1 of the date PORCELAIN METALS discovers or obtains the records, documents, or
2 information.

3 61. For as long as PORCELAIN METALS owns the PROPERTY,
4 PORCELAIN METALS shall allow DTSC access to the PROPERTY to perform
5 response actions.

6 **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

7 62. Except as expressly provided in Section IX (PLAINTIFF's Reservation
8 of Rights) of this Consent Decree, PLAINTIFF covenants not to sue PORCELAIN
9 METALS and its representatives, affiliates, successors, heirs, legatees, and assigns
10 and FEDERAL INSURANCE COMPANY (individually a "Released Party" and
11 collectively the "Released Parties") for civil liability for reimbursement of all or
12 any portion of past or future RESPONSE COSTS, declaratory relief, injunctive
13 relief, or any other judicial or administrative action or relief pursuant to sections
14 107 of CERCLA, 42 U.S.C. sections 9607, the Resource Conservation and
15 Recovery Act of 1976, 42 U.S.C. section 6901 *et seq.*, the Carpenter-Presley-
16 Tanner Hazardous Substances Account Act, California Health and Safety Code
17 section 25300 *et seq.*, the California Hazardous Waste Control Law, California
18 Health and Safety Code section 25100 *et seq.*, or nuisance or trespass, with regard to
19 releases or threatened releases of hazardous substances related to the SITE, whether
20 known or unknown. This Covenant Not to Sue is conditioned upon the complete
21 and satisfactory performance by PORCELAIN METALS of all its obligations
22 under this Consent Decree. This Covenant Not to Sue may be revoked and deemed
23 not effective if PORCELAIN METALS fails to fully perform on its obligations
24 stated in this Consent Decree.

25 63. For any person, entity, or Released Party not bound by the signatories to
26 this Consent Decree, PLAINTIFF's covenant not to sue is not valid to those persons
27 or entities absent their express written acknowledgement that they waive their right
28 to sue PLAINTIFF in accordance with the terms of Paragraph 67.

1 **IX. PLAINTIFF’S RESERVATION OF RIGHTS**

2 64. Reservation of Claims. PLAINTIFF reserves, and this Consent Decree is
3 without prejudice to, all rights against PORCELAIN METALS and its
4 representatives, affiliates, successors, heirs, legatees, and assigns, or any rights
5 PLAINTIFF may have against FEDERAL INSURANCE COMPANY with respect
6 to the following matters:

- 7 a. failure of PORCELAIN METALS to meet the requirements of
8 this Consent Decree;
- 9 b. damage to natural resources, as defined in CERCLA section
10 101(6), 42 U.S.C. § 9601(6), including all costs incurred by any
11 natural resources trustees;
- 12 c. liability resulting from introduction of any hazardous substance,
13 pollutant, or contaminant to the SITE by PORCELAIN METALS
14 after the EFFECTIVE DATE;
- 15 d. liability resulting from overt acts of PORCELAIN METALS after
16 the EFFECTIVE DATE that cause the exacerbation of the
17 hazardous substance conditions existing at or from the SITE;
- 18 e. claims based on liability arising from the past, present, or future
19 releases or disposal of hazardous substances at sites or locations
20 other than the SITE and;
- 21 f. Claims based on criminal liability.

22 65. Government Authority. Except as expressly provided in this Consent
23 Decree, nothing in this Consent Decree is intended, nor shall it be construed to,
24 preclude DTSC from exercising its authority under any law, statute, or regulation.
25 Furthermore, nothing in this Consent Decree is intended, nor shall it be construed
26 to, preclude any other state agency, department, board, or entity, or any federal
27 entity from exercising its authority under any law, statute, or regulation.
28

1 66. Claims Against Other Persons. DTSC reserves, and this Consent is
2 without prejudice to, all rights, claims, and causes of action DTSC may have
3 against any person or entity other than the Released Parties. Other than as set forth
4 in this Consent Decree, nothing in this Consent Decree is intended to be nor shall it
5 be construed as a release, covenant not to sue, or compromise of any claim or cause
6 of action which DTSC may have against any person other than the Released Parties.

7 **X. COVENANT NOT TO SUE BY PORCELAIN METALS**

8 67. PORCELAIN METALS covenants not to sue, and agrees not to assert
9 any claims or causes of action against PLAINTIFF or any DTSC contractors or
10 employees that arise from any action or inaction by them related to the SITE,
11 including, but not limited to, any claims or causes of action for injuries, losses,
12 costs, damages, declaratory relief, or injunctive relief that:

- 13 a. arise out of the transaction or occurrence that is the subject matter
14 of PLAINTIFF's Complaint;
- 15 b. relate to hazardous substances, wastes, or other materials released,
16 disposed of, generated, or transported to or from the Site; or
- 17 c. are caused or incurred as a result of the performance of the
18 requirements of this Consent Decree or DTSC's response actions
19 at the SITE.

20 68. In any legal proceedings that PLAINTIFF may initiate against
21 PORCELAIN METALS for non-compliance with this Consent Decree, in such
22 proceedings, PORCELAIN METALS may raise any and all defenses that
23 PORCELAIN METALS deems to be relevant to the issue of whether or not it has
24 complied with the terms of the Consent Decree.

1 **XI. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION**

2 69. With regard to claims for contribution against PORCELAIN METALS
3 for “Matters Addressed” in this Consent Decree, the PARTIES agree, and the Court
4 finds as follows:

- 5 a. This Consent Decree constitutes a judicially approved settlement
6 within the meaning of CERCLA section 113(f)(2), 42 U.S.C. §
7 9613(f)(2).
8 b. This Consent Decree requires that PORCELAIN METALS pay
9 certain costs with respect to its liability at the SITE.
10 c. PORCELAIN METALS is entitled to the contribution protection
11 provided by CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2),
12 and by state statutory and common law for the “Matters
13 Addressed” in this Consent Decree, except for actions and claims
14 identified in Section VIII (PLAINTIFF’s Reservation of Rights).

15 70. “Matters Addressed.” The “Matters Addressed” in this Consent Decree
16 include all response actions taken or to be taken and all RESPONSE COSTS
17 incurred or to be incurred, at or in connection with the SITE by PLAINTIFF or any
18 other person.

19 71. The protection provided for in this Section XI is conditioned upon full
20 compliance by PORCELAIN METALS with its obligations in this Consent Decree.

21 72. Nothing in this Consent Decree limits or impairs the right of PLAINTIFF
22 to pursue any other person for unrecovered RESPONSE COSTS incurred by
23 PLAINTIFF.

24 **XII. NOTIFICATION**

25 73. Notification to or communication between the PARTIES as required or
26 provided for in this Consent Decree shall be addressed as follows:

1 For PLAINTIFF:

2 Robin McGinnis
3 Senior Staff Counsel
4 Department of Toxic Substances Control
5 Office of Legal Counsel, MS-23A
6 1001 I Street
7 Sacramento, CA 95814

8 John W. Everett
9 Deputy Attorney General
10 California Dept. of Justice
11 600 West Broadway, Suite 1800
12 San Diego, CA 92101

13 For PORCELAIN METALS:

14 Carolyn M. McBride
15 Porcelain Metals Corporation
16 20 River Hill Road
17 Louisville, KY 40207

18 With copy to:

19 Thomas F. Vandenburg
20 Wood, Smith, Henning & Berman LLP
21 10960 Wilshire Boulevard, 18th Floor
22 Los Angeles, CA 90024

23 **XIII. GENERAL PROVISIONS**

24 74. Parties Bound. This Consent Decree shall apply to, be binding upon, and
25 inure to the benefit of the PARTIES and their respective representatives,
26 successors, heirs, legatees, and assigns.

27 75. No Rights in Other Parties. Except as provided in Paragraph 74, nothing
28 in this Consent Decree shall be construed to create any rights in, or grant any cause
of action to, any person not a party to this Consent Decree.

76. No Waiver of Enforcement. The failure of DTSC to enforce any
provision of this Consent Decree shall in no way be deemed a waiver of such
provision or in any way affect the validity of this Consent Decree. The failure of
DTSC to enforce any such provision shall not preclude it from later enforcing the
same or any other provision of this Consent Decree.

1 77. Attorneys' Fees and Costs. Except as expressly provided in this Consent
2 Decree, the PARTIES will bear their own attorneys' fees and costs and will not
3 seek to recover attorneys' fees and/or litigation costs against each other.

4 78. Final Agreement. This Consent Decree constitutes the final, complete,
5 and exclusive agreement and understanding between the PARTIES with respect to
6 the settlement embodied in this Consent Decree.

7 79. Modifications. This Consent Decree may be modified only upon written
8 approval of the PARTIES and with the consent of the Court.

9 80. Counterparts. This Consent Decree may be executed in two or more
10 counterparts, each of which shall be deemed an original, but all of which together
11 shall constitute one and the same instrument.

12 81. Agent. PORCELAIN METALS has appointed and authorized the agents
13 identified in Paragraph 73 to receive notices with respect to all matters arising
14 under or relating to this Consent Decree.

15 **XIV. ENTRY OF THE CONSENT DECREE**

16 82. This Consent Decree shall be lodged with the Court for a period of not
17 less than thirty (30) DAYS for public notice and comment. DTSC shall file with
18 the Court any written comments received and DTSC's responses thereto. DTSC
19 reserves the right to withdraw or withhold its consent to entry of the Consent
20 Decree if comments regarding the Consent Decree disclose facts or considerations
21 that indicate that this Consent Decree is inappropriate, improper, or inadequate.
22 DTSC may modify or withdraw its consent to this Consent Decree if comments
23 received during the public comment period disclose facts or considerations that
24 indicate that this Consent Decree is inappropriate, improper, or inadequate.
25 PORCELAIN METALS consents to the entry of this Consent Decree without
26 further notice.

27 83. If, for any reason, the Court declines to approve this Consent Decree in
28 the form presented, this agreement is voidable at the sole discretion of any PARTY

1 and the terms of the Consent Decree may not be used as evidence in any litigation
2 between the PARTIES.

3 84. Each signatory to this Consent Decree certifies that he or she is fully
4 authorized by the PARTY he or she represents to enter into the terms and
5 conditions of this Consent Decree, to execute it on behalf of the PARTY
6 represented, and to legally bind that PARTY to all the terms and conditions of this
7 Consent Decree.

8 **XV. APPROVAL OF PARTIES**

9 DTSC and PORCELAIN METALS consent to this Consent Decree by and
10 through their duly authorized representatives as follows:

11 FOR THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES
12 CONTROL:

13 DATE: _____ By: _____
14 SIGNATURE

15 _____
16 NAME (printed or typed)

17 _____
18 TITLE (printed or typed)

19
20 FOR PORCELAIN METALS CORPORATION:

21
22 DATE: _____ By: _____
23 SIGNATURE

24 _____
25 NAME (printed or typed)

26 _____
27 TITLE (printed or typed)

28

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APPROVED AS TO FORM AND CONTENT:

Dated:

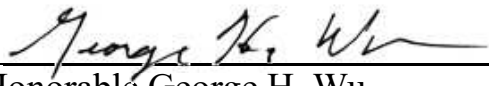
John Everett
Deputy Attorney General
Attorney for Plaintiff

Dated:

Thomas Vandenburg
Attorney for Defendant

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: February 5, 2019



Honorable George H. Wu
United States District Judge

EXHIBIT A

This page is part of your document - DO NOT DISCARD.



20161476375



Pages:
0007

Recorded/Filed in Official Records
Recorder's Office, Los Angeles County,
California

11/23/16 AT 11:27AM

FEES :	0.00
TAXES :	0.00
OTHER :	0.00
PAID :	0.00



LEADSHEET



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SEQ:
01

DAR - Counter (Upfront Scan)



THIS FORM IS NOT TO BE DUPLICATED

RECORDING REQUESTED BY:

Department of Toxic Substances Control

AND WHEN RECORDED, MAIL DOCUMENT TO:

Sayareh Amirebrahimi,
Branch Chief
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
9211 Oakdale Ave
Chatsworth, CA 91311



SPACE ABOVE THIS LINE RESERED FOR RECORDER'S USE

STATUTORY LIEN

The State of California, Department of Toxic Substances Control (DTSC) hereby records this Statutory Lien in the amount of \$2,925,211.32 on the real property in the County of Los Angeles, State of California located at 6904 East Slauson Avenue in Commerce, Los Angeles County, State of California, and identified as Assessor's Parcel Number (APN) 6356-017-028 by the Los Angeles County Office of the Assessor. The property is known as the CAMEO site, Site Code 300546 (the "Site"). The owner of record as shown on the latest equalized assessment roll for APN 6356-017-028 is the Kenfield Corporation. However, Porcelain Metals Corporation, a Kentucky corporation, has demonstrated that it is the current property owner as the result of the merger of Kenfield Corporation into California Metal Enameling Company (CAMEO), and the merger of CAMEO into Porcelain Metals Corporation.

A legal description of the property described in the Grant Deed, dated November 24, 1952, found in the official records in the Los Angeles County Registrar-Recorder/County Clerk is as follows:

The real property, in the county of Los Angeles, state of California, described as:

The southeasterly 228 feet of the northwesterly 558.91 feet of lot 43 of East Laguna, in the County of Los Angeles, State of California, as shown on map marked Exhibit A, and attached to decree of partition in Action B-81961, Superior Court of said County, a certified copy of which decree is recorded in book 122, page 162 et seq., of Official Records, in the office of the County Recorder of said County.

EXCEPT the northwesterly 70 feet of the southwesterly 50 feet thereof.

A legal description of the property described in the Quitclaim Deed, dated November 24, 1952, found in the official records in the Los Angeles County Registrar-Recorder/County Clerk is as follows:

The real property in the County of Los Angeles, State of California, described as:

The northwesterly 70 feet of the southwesterly 50 feet of the southeasterly 228 feet of the northwesterly 558.91 feet of lot 43 of East Laguna, in the County of Los Angeles, State of California, as shown on map marked Exhibit A, and attached to decree of partition in Action B-81961, Superior Court, of said county, a certified copy of which decree is recorded in book 122, page 162 et seq., of Official Records, in the office of the County Recorder of said County.

DTSC incurred necessary response costs pursuant to the Hazardous Substances Account Act, Health and Safety Code division 20, chapter 6.8, section 25360 et seq. (HSAA), in conducting or overseeing response action(s) due to a release and/or threatened release of hazardous substances at the Site. The property described herein was subject to, or affected by, the response actions conducted by DTSC. The amount secured by this lien is equal to the costs or damages incurred by DTSC pursuant to the HSAA from April 1, 2006 through March 31, 2016 with respect to the property described herein and which remain unreimbursed. DTSC's investigation and/or remediation of the Site continues and DTSC will incur additional response costs related to the Site. DTSC may record another lien for any future response costs that remain unreimbursed.

This lien is recorded pursuant to, and its enforceability is governed by, Health and Safety Code section 25365.6. Health & Safety Code section 25365.6, subdivision (a), provides that this lien arises "at the time costs are first incurred by the Department ... with respect to the response action at the site." Health & Safety Code section 25365.6, subdivision (d), provides that DTSC's statutory lien "shall have the force and effect of, and the priority of, a judgment lien." Pursuant to Health & Safety Code section 25365.6, subdivision (c), the lien continues until the liability for these costs or a damage, or a judgment against the responsible party, is satisfied.

Date:

11/10/2016




Sayareh Amirebrahimi
Branch Chief
Chatsworth Office
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, CA 91311

VERIFICATION OF STATUTORY LIEN

I, Sayareh Amirebrahimi, the undersigned, am employed as a Branch Chief by the State of California, Department of Toxic Substances Control (DTSC), the entity recording the foregoing Statutory Lien. I have been duly authorized by DTSC to execute this verification, have read the foregoing Statutory Lien, know the contents thereof, and that the same is true. The Statutory Lien contains, among other things, a correct statement of the interest held in the real property described therein by DTSC.

I declare under penalty of perjury that the foregoing is true and correct, and that this verification was executed in Los Angeles, California on November 10, 2016.



Sayareh Amirebrahimi, Branch Chief
Chatsworth Office
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
9211 Oakdale Ave
Chatsworth, CA 91311

NOTARY ACKNOWLEDGMENT OF STATUTORY LIEN

A notary public or other officer completing this certificate verifies only that the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

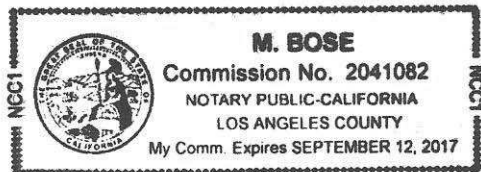
State of California
County of LOS ANGELES

On NOVEMBER 10, 2016 before me, M. BOSE, NOTARY PUBLIC, personally appeared SAYARAH AMIREBRAHIMI who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: M. Bose (Seal)





Matthew Rodriguez
Secretary for
Environmental Protection



Department of Toxic Substances Control

Barbara A. Lee, Director
9211 Oakdale Avenue
Chatsworth, California 91311



Edmund G. Brown Jr.
Governor

November 10, 2016

Los Angeles County Registrar-
Recorder/County Clerk
14340 Sylvan St.
Van Nuys, CA 91401

HEALTH & SAFETY CODE SECTION 25365.6 LIEN ON 6904 EAST SLAUSON AVENUE COMMERCE, CA 90040, COUNTY OF LOS ANGELES, ASSESSOR'S PARCEL NUMBER (APN) 6356-017-028.

Dear County Recorder:

Pursuant to Health and Safety Code section 25365.6, the Department of Toxic Substances Control (DTSC) requests that the enclosed Statutory Lien in the amount of \$2,925,211.32 be recorded on the real property located at 6904 East Slauson Avenue in the city of Commerce, County of Los Angeles, California, Assessor's Parcel Number (APN) 6356-017-028. The property is currently owned by Porcelain Metals Corporation, the successor to Kenfield Corporation. DTSC understands that recording fees are waived for DTSC, a State agency, pursuant to Government Code section 27383.

If you have any questions, please contact me at (818) 717-6585 or Armen.Minassian@dstc.ca.gov.

Sincerely,

Armen G. Minassian

Armen Minassian
Project Manager
Chatsworth Office
Brownfields and Environmental Restoration Program

Enclosures

1. Statutory Lien
2. Verification of Statutory Lien
3. Notary Acknowledgment of Statutory Lien

cc:

D. Kevin Shipp
Senior Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814