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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LUKE DELGADILLO GARCIA

Plaintiff,

vs.

MILLER CASTINGS, INC.;

Defendant,

Civil Case No.: 2:17-CV-07408-AB (AGR~~x~~)

~~[PROPOSED]~~ **CONSENT DECREE**

**(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)**

1 **CONSENT DECREE**

2 The following Consent Decree is entered into by and between Luke Delgadillo Garcia (“Plaintiff”)
3 and Miller Castings, Inc. (“Miller Castings”). The entities entering into this Consent Decree are each an
4 individual “Settling Party” and collectively the “Settling Parties.”

5 **WHEREAS**, Plaintiff is a citizen of the State of California.

6 **WHEREAS**, Plaintiff is concerned with the environmental health of the San Gabriel River
7 Watershed, and uses and enjoy the waters of the San Gabriel River, its inflows, outflows and other waters
8 of the San Gabriel Watershed;

9 **WHEREAS**, Miller Castings is the owner and operator of two nickel, cobalt steel and aluminum
10 castings facilities located at 12251 Coast Drive and 2503 Pacific Park Drive in Whittier, California.,
11 Hereinafter, the facility located at 12251 Coast Drive shall be referred to herein as the “Coast Drive
12 Facility” and the facility at 2503 Pacific Park Drive shall be referred to herein as the “Pacific Park
13 Facility.” The Coast Drive Facility and the Pacific Park Facility shall be collectively referred to herein by
14 the Settling Parties as the “Facilities”;

15 **WHEREAS**, Plaintiff’s use and enjoyment of these waters are negatively affected by the pollution
16 allegedly caused by the operations at the Facilities;

17 **WHEREAS**, Plaintiff acts in the interest of the general public to prevent pollution in these
18 waterway, for the benefit of their ecosystems, and for the benefits of all individuals and communities who
19 use these waterways for various recreational, educational, and spiritual purposes;

20 **WHEREAS**, the discharges from the Facilities are regulated by the National Pollutant Discharge
21 Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board]
22 Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“1997 Storm Water
23 Permit”), and as amended by Order No. 2014-0057-DWQ (“2015 Storm Water Permit”) (collectively, the
24 “Industrial General Permit” or the “IGP”), and the Federal Water Pollution Control Act, 33 U.S.C. §§
25 1251 *et seq.* (“Clean Water Act” or “CWA”);

26 **WHEREAS**, on August 19, 2016 Plaintiff sent Miller Castings, the United States Environmental
27 Protection Agency (“EPA”), EPA Region IX, the State Water Resources Control Board (“State Board”),
28 and the Los Angeles Water Quality Control Board (“Regional Board”) a notice of intent to file suit

1 (“Notice Letter”) under Sections 505(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1365(a) and (b).
2 The Notice Letter alleged violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and
3 violations of the 1997 Storm Water Permit and the 2015 Storm Water Permit at the Miller Castings
4 Facilities¹;

5 **WHEREAS**, the parties engaged in extensive negotiations to reach an agreement in principle
6 since the fall of 2016 and agreed that the statute of limitations would be tolled until November 17, 2017;

7 **WHEREAS**, on October 10, 2017 Plaintiff filed a complaint against Miller Castings in the United
8 States District Court, Central District of California (Case No. 2:17-cv-07408), alleging violations of
9 Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and violations of the Storm Water Permit at
10 the Miller Castings Facilities (“Complaint”);

11 **WHEREAS**, Plaintiff alleges Miller Castings to be in violation of the substantive and procedural
12 requirements of the 1997 Storm Water Permit, the 2015 Storm Water Permit, and the Clean Water Act
13 with respect to the Miller Castings Facilities;

14 **WHEREAS**, Miller Castings denies all allegations in the Notice Letter and Complaint relating to
15 the Miller Castings Facilities;

16 **WHEREAS**, Plaintiff and Miller Castings have agreed that it is in the Settling Parties’ mutual
17 interest to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the
18 allegations set forth in the Complaint without further proceedings; and

19 **WHEREAS**, all actions taken by Miller Castings pursuant to this Consent Decree shall be made
20 in compliance with all applicable federal and state laws and local rules and regulations.

21
22 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES**
23 **AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

24 1. The Court has jurisdiction over the subject matter of this action pursuant to Section 505(a)
25 of the Clean Water Act, 33 U.S.C. § 1365(a);

26
27
28 ¹ For purposes of this Consent Decree, the NPDES permit and any amendments thereto in effect
at the time of Miller Castings’ required compliance with the terms of this Consent Decree shall be
referred to as “the Industrial General Permit” or “IGP”.

1 2. Venue is appropriate in the Central District of California pursuant to Section 505(c)(1) of
2 the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Miller Castings Facilities are located within this
3 District;

4 3. The Complaint states claims upon which relief may be granted pursuant to Section
5 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1);

6 4. Plaintiff has standing to bring this action;

7 5. The Court shall retain jurisdiction over this matter for purposes of enforcing the terms of
8 this Consent Decree for the life of the Consent Decree, or as long thereafter as is necessary for the Court
9 to resolve any motion to enforce this Consent Decree.

10 **I. OBJECTIVES**

11 It is the express purpose of the Settling Parties entering into this Consent Decree to further the
12 objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251, et seq., and to resolve those issues alleged
13 by Plaintiff in their Complaint. In light of these objectives and as set forth fully below, Miller Castings
14 agrees to comply with the provisions of this Consent Decree and to comply with the requirements of the
15 IGP and all applicable provisions of the Clean Water Act. Specifically, Miller Castings agrees to comply
16 with Receiving Water Limitation VI.A. in the IGP which requires that Miller Castings “shall ensure that
17 industrial storm water discharges and authorized Non-Storm Water Discharges (“NSWDs”) do not cause
18 or contribute to the exceedance of any applicable water quality standards in any affected receiving water,”
19 and Effluent Limitation V.A. of the 2015 Storm Water Permit. Miller Castings shall develop and
20 implement BMPs necessary to achieve compliance with the IGP.

21 **II. AGENCY REVIEW AND TERM OF CONSENT DECREE**

22 **A. Agency Approval.** Plaintiff shall submit this Consent Decree to the United States Department of
23 Justice and the EPA (collectively “Federal Agencies”) within three (3) days of the final signature of the
24 Settling Parties for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires
25 forty-five (45) days after receipt by both agencies, as evidenced by written acknowledgement of receipt
26 by the agencies or the certified return receipts, copies of which shall be provided to Miller Castings if
27 requested. In the event that the Federal Agencies object to entry of this Consent Decree, the Settling Parties
28 agree to meet and confer to attempt to resolve the issue(s) raised by the Federal Agencies within a

1 reasonable amount of time.

2 **B. Effective Date.** The term “Effective Date” as used in this Consent Decree shall mean the day the
3 Court enters this Consent Decree.

4 **C. Termination Date.** This Consent Decree shall terminate two (2) years after the Effective Date
5 (“Termination Date”), unless there is a prior ongoing, unresolved dispute regarding Miller Castings’
6 compliance with this Consent Decree.

7 **D. Inspection of Facilities.** Plaintiff may conduct an inspection of the Miller Castings’ Facilities up
8 to forty-five (45) days prior to the Termination Date. The inspection shall be conducted according to the
9 rules applicable to annual site inspections described below.

10 **III. POLLUTION CONTROL REQUIREMENTS**

11 **A. Storm Water Pollution Reduction Measures**

12 1. The storm water pollution control measures required by this Consent Decree shall be
13 designed and operated to manage storm water discharges, through full compliance with the IGP.

14 2. Commencing July 1, 2017 through the Termination Date of this Consent Decree, Miller
15 Castings shall engage in the following activities to achieve compliance with the Permit and this
16 Consent Decree:

17 (a) If it has not done so by the Effective Date, Miller Castings will appoint a Qualified
18 Industrial Storm Water Practitioner (“QISP”) for each of the Facilities by January 1, 2018;

19 (b) Level 1 ERA Evaluations – By January 1, 2018, Miller Castings shall, if it has not done so
20 prior to the Effective Date:

21 (i) Complete an evaluation, with the assistance of a QISP, of the industrial pollutant
22 sources at the Facilities that are or may be related to the exceedance(s) of numeric
23 effluent limits set forth in this Consent Decree; and

24 (ii) Identify in the evaluation the corresponding BMPs in the SWPPP and any
25 additional BMPs and Storm Water Pollution Prevention Plan (“SWPPP”) revisions
26 necessary to prevent future exceedances of numeric effluent limits set forth in this
27 Consent Decree and to comply with the requirements of the Industrial General
28 Permit (“IGP”).

1 **(iii) Level 1 Action Plan and ERA Report.** Based upon the above evaluation, Miller
2 Castings shall, as soon as practicable, but no later than January 1, 2018:

3 **a)** Revise the SWPPP as necessary and implement any additional BMPs identified
4 in the evaluation;

5 **b)** Certify and submit to Plaintiff, the Court and the Los Angeles Regional Water
6 Quality Control Board (“RWQCB”) via SMARTS a Level 1 Action Plan/ERA
7 Report prepared by a QISP that includes the following:

8 **1)** A summary of the Level 1 ERA Evaluation required in by this provision;

9 **2)** A detailed description of the SWPPP revisions and any additional BMPs for
10 each parameter that exceeded a numeric limit set forth in this Consent
11 Decree; and

12 **c)** Certify and submit to Plaintiff, the Court and the RWQCB via SMARTS the
13 QISP’s identification number, name, and contact information (telephone
14 number, e-mail address).

15 **3.** In addition to the activities described in Sections III.A.2(a) and (b) above, Miller Castings
16 agrees to, comply, at its sole discretion, with any one of the following three (3) options set forth in
17 Paragraphs 4-6 below.

18 **4. OPTION 1:** By March 1, 2018, as to either the Coast Drive Facility or the Pacific
19 Park Facility or as to both Facilities, at Miller Castings’ option, it will file a NEC and provide a
20 copy of the NEC Permit Registration Documents (PRDs) to Plaintiff. Miller Castings further
21 agrees to notify Plaintiff pursuant to Section VIII.E. when it receives notification from the Los
22 Angeles Regional Water Quality Control Board (“State Board”) either approving or disapproving
23 the NEC conditional exclusion for the Coast Drive Facility or the Pacific Park Facility or both
24 Facilities as the case may be, or;

25 **5. OPTION 2:** In the event that Miller Castings: does not file for and obtain NEC, as
26 set forth in Section III.A.3(a) above, for either or both Facilities, then, as through the Termination
27 Date, as to the facility for which a NEC was not filed and/or approved, and by January 1, 2019,
28 Miller Castings will complete modifications to direct industrial stormwater discharge flows from

1 those areas uniquely identified including industrial activities potentially impacting stormwater
2 discharges (does not include employee parking areas, roof outfalls, and other non-industrial
3 sources) to a stormwater collection and infiltration system designed to comply with design storm
4 standards established in Section H.6. of the IGP, except as provided in an Industrial Activity BMP
5 Demonstration (Section XII.D.2.a). A Factor of Safety shall be incorporated into the design of all
6 treatment control BMPs to ensure that storm water is sufficiently treated throughout the life of the
7 treatment control BMPs. The design storm standards for treatment control BMPs are as follows:

8 (a) Volume-based BMPs: The Discharger, at a minimum, shall calculate the volume to
9 be treated using one of the following methods:

10 (i) The volume of runoff produced from an 85th percentile 24-hour storm
11 event, as determined from local, historical rainfall records;

12 (ii) The volume of runoff produced by the 85th percentile 24-hour storm event,
13 determined as the maximized capture runoff volume for the facility, from the formula
14 recommended in the Water Environment Federation's Manual of Practice;¹⁴ or,

15 (iii) The volume of annual runoff required to achieve 80% or more treatment,
16 determined in accordance with the methodology set forth in the latest edition of California
17 Stormwater Best Management Practices Handbook, using local, historical rainfall records.

18 (b) Flow-based BMPs: The Discharger shall calculate the flow needed to be treated
19 using one of the following methods:

20 (i). The maximum flow rate of runoff produced from a rainfall intensity of at
21 least 0.2 inches per hour for each hour of a storm event;

22 (ii) The maximum flow rate of runoff produced by the 85th percentile hourly
23 rainfall intensity, as determined from local historical rainfall records, multiplied by a factor of two;
24 or,

25 (iii) The maximum flow rate of runoff, as determined using local historical
26 rainfall records, that achieves approximately the same reduction in total pollutant loads as would
27 be achieved by treatment of the 85th percentile hourly rainfall intensity multiplied by a factor of
28 two.

1
2 **6. OPTION 3:** In the event that Miller Castings: does not elect either OPTION 1 or OPTION
3 2 as set forth in Sections III.A.4 and III. A.5 above, or does not file for and obtain NEC for either
4 or both Facilities, then, as to the facility for which a NEC was not filed and/or approved, then,
5 through either through the Termination Date, or until the modifications set forth in OPTION 2 are
6 completed, whichever is earlier, Miller Castings will continue to comply with the IGP, and will
7 assure the incorporation of the following BMPs, as more fully described in Miller Castings’
8 SWPPP, which shall be implemented at the Miller Castings Facilities, the boundaries of which are
9 outlined on the Miller Castings Facilities Site Maps (“Site Maps”), attached as Exhibit “A” hereto.
10 The Parties agree that the SWPPP may be modified from time to time as more fully described in
11 this Consent Decree. In the event of a modification to the SWPPP or Facilities Site Map, Miller
12 Castings will provide a copy of the revised exhibits on Plaintiff, the Court in the manner described
13 herein, and the RWQCB via SMARTs.

14 **(a) Non-Structural BMPs**

15 **(i) Good Housekeeping**

- 16 a) Observe and maintain industrial activity outdoor areas;
17 b) Minimize or prevent material tracking offsite;
18 c) Minimize dust generated by industrial activities;
19 d) Cleanup areas affected by rinse and wash water;
20 e) To the extent practical, cover stored industrial materials that can be readily
21 mobilized by contact with storm water;
22 f) Contain stored non-solid industrial materials or wastes;
23 g) Prevent improper disposal of rinse/wash waters; and
24 h) Minimize flows of offsite storm water and NSWDs into material handling areas.

25 **(ii) Preventative Maintenance**

- 26 a) Identify industrial equipment and systems that may leak;
27 b) Observe the equipment and systems to detect leaks;
28 c) Establish a schedule for maintenance; and

1 d) Establish procedures for maintenance and repair.

2 **(iii) Spill Prevention and Response Procedures**

3 a) Establish procedures and/or controls to minimize spills and leaks;

4 b) Develop and implement spill and leak response procedures to prevent industrial
5 materials from being discharged;

6 c) Clean up spills and leaks promptly;

7 d) Identify and describe needed spill and leak response equipment; and

8 e) Train Storm Water Team in appropriate spill response.

9 **(iv) Material Handling and Waste Management**

10 a) Prevent or minimize handling of industrial materials or wastes that can be
11 readily mobilized;

12 b) Contain all stored non-solid industrial materials or wastes that can be
13 transported or dispersed by the wind or rain;

14 c) Cover industrial waste disposal containers and industrial material storage
15 containers that contain industrial materials when not in use;

16 d) Divert run-on and storm water generated from the Facilities within the Facilities
17 away from all stockpiled materials;

18 e) Clean all spills of industrial materials or wastes; and

19 f) Observe and clean as appropriate any outdoor material or waste that could cause
20 contamination to storm water if contact is made.

21 **(v) Erosion and Sediment Controls**

22 a) Implement effective wind erosion controls;

23 b) Provide effective stabilization for inactive areas, finished slopes, and other
24 areas prior to a forecasted storm event based on the closest National Oceanic
25 and Atmospheric Administration (“NOAA”) weather station.;

26 c) Maintain effective perimeter controls and stabilize site entrances;

27 d) Divert run-on and storm water generated from within the Facilities away from
28 erodible materials; and

1 e) Properly design and maintain sediment basins.

2 (vi) **Employee Training.** Miller Castings' QISP(s) will provide sufficient training to
3 the appropriate team members assigned to perform activities required by this
4 Consent Decree ("Storm Water Team") including:

5 a) Preparing or acquiring necessary and appropriate training manuals;

6 b) Providing a training schedule; and

7 c) Maintaining training documentation.

8 (vii) **Quality Assurance and Record Keeping**

9 a) Develop and implement management procedures to ensure implementation of
10 plans;

11 b) Develop a method of tracking and recording program implementation; and

12 c) Maintain implementation records (i.e., BMP deployment records, employee
13 training logs, spill occurrence and clean-up records).

14 (b) **Advanced BMPs.** Advanced BMPs will be implemented to the extent appropriate and
15 feasible, in conjunction with industry standards and applicable to the Facilities industrial
16 activities in order to prevent and reduce storm water contact with industrial

17 (c) **Non-Storm Water Discharges (NSWDs)**

18 (i) Reduce or prevent the contact of authorized NSWDs with materials or equipment
19 that are potential sources of pollutants;

20 (ii) Reduce, to the extent practicable, the flow or volume of authorized NSWDs;

21 (iii) Ensure that authorized NSWDs do not contain quantities of pollutants that cause or
22 contribute to an exceedance of water quality standards ("WQS") as set forth in the
23 RWQCB Basin Plan; and

24 (iv) Reduce or prevent discharges of pollutants in authorized NSWDs in a manner that
25 reflects best industry practice considering technological availability and economic
26 practicability and achievability.

27 (d) **Waste, Garbage, and Floatable Debris**

28 (i) Dispose of grass clippings, leaves, sticks, or other collected vegetation as garbage,

or by composting. Do not dispose of collected vegetation into waterways or storm drainage systems; and

(ii) Waste receptacles exposed to storm water shall be tightly closed or otherwise covered when not in use.

B. Numeric Action Level (“NAL”) for Discharges from the Miller Castings Facilities.

Exceedances of the values presented in Table 1 indicate to the discharger that additional BMPs may be needed in order to comply with BAT/BCT.

Table 1: Numeric Action Levels for Discharges

Pollutant	Test Method	Units	Annual NAL	Instantaneous Maximum NAL
pH	Per IGP Section XI.C.2	pH units	N/A	Less than 6.0, Greater than 9.0
Total Suspended Solids	SM-2540-D	mg/L	100	400
Oil and Grease	EPA-1664A	mg/L	15	25
Total Recoverable Aluminum	EPA-200.8	mg/L	0.750	N/A
Copper, Total	EPA-200.8	mg/L	0.0332 ²	N/A
Total Recoverable Iron	EPA-200.8	mg/L	1.0 mg/L	N/A
Total Recoverable Zinc	EPA-200.8	mg/L	0.26 ³	N/A

C. Level 2 Status

1. Level 2 Action Plan. Miller Castings shall compare the analytical results of the storm water samples collected at the Miller Castings Miller Castings Facilities for those Qualifying Storm Events (“QSEs”) Miller Castings is required to sample pursuant to the terms of this Consent Decree to the corresponding instantaneous maximum NAL exceedance⁴ or annual NAL

² Or as adjusted based on California Toxic Rule hardness provisions.

³ Or as adjusted based on California Toxic Rule hardness provisions.

⁴ An Instantaneous Maximum NAL Exceedance occurs when two or more analytical results from samples taken for any single parameter within a reporting year exceed the instantaneous maximum NAL value as illustrated in Table 1.

1 exceedance⁵ as specified in Table 1. If it is determined that a NAL exceedance has occurred for
2 the same parameter while Miller Castings is in Level 1, any time after October 1, 2018, Miller
3 Castings shall certify and submit a Level 2 Action Plan that identifies industrial activity BMP
4 demonstrations the Facilities has selected to perform to Plaintiff, the Court, and the RWQCB via
5 SMARTS by January 1 following the reporting year during which the exceedance occurred or
6 thirty (30) days from Miller Castings' receipt of sampling data showing the exceedance, whichever
7 is greater.

8 **2. Level 2 Action Plan Requirements.** Each Level 2 Action Plan submitted shall be prepared
9 by a QISP and include one or more of the following demonstrations:

10 (a) The identification of the contaminant(s) discharged in excess of the numeric value(s) in
11 Table 1;

12 (b) An assessment of all pollutant sources of each contaminant discharged in excess of the
13 numeric value(s) in Table 1 and the extent to which those contaminants are associated with
14 industrial activities at the Facilities; and

15 (c) For contaminants associated with industrial activities, the identification of additional
16 BMPs that shall be implemented to achieve compliance with the Table 1 Limit(s), as well
17 as the design plans and calculations of these additional BMPs, or, in the alternative, an
18 evaluation of any additional BMPs that would reduce or prevent an exceedance, estimated
19 costs of the additional BMPs evaluated, an analysis demonstrating that the additional BMPs
20 needed to prevent the exceedance are not BAT/BCT and are not required to ensure
21 discharges do not cause or contribute to violations of water quality standards, and an
22 analysis describing the basis for the selection of BMPs implemented in lieu of the
23 additional BMPs evaluated but not implemented.

24 (d) **Implementation Schedule**

25 (i) The time schedules for implementation shall ensure that all BMPs are implemented
26 as soon as possible but in no case later than January 1 following the reporting year
27

28 ⁵ An Annual NAL Exceedance occurs when the average concentration for each parameter using
the results of all the samples taken for the entire Facilities over the reporting year.

1 during which the exceedance occurred or thirty (30) days from Miller Castings's
2 receipt of sampling data showing the exceedance, whichever is greater.

3 (ii) Miller Castings shall be entitled to a single time extension of up to six (6) months
4 upon submitting the following information to SMARTS and the Plaintiff:

- 5 a) Reason for the time extension;
- 6 b) A revised Level 2 Action Plan describing the necessary tasks that will need to
7 be taken in order to complete the technical report justifying the extension; and
- 8 c) A description of the BMPs that will be implemented in the interim while
9 permanent BMPs are being implemented.

10 3. Miller Castings shall diligently file and pursue all required local agency applications for
11 permits and/or approvals for the BMPs included in any Level 2 Action Plan. Miller Castings shall
12 further diligently pursue the procurement of contractors, labor, and materials to complete all such
13 BMPs by the deadline for implementing the Level 2 Action Plan described in this section, and
14 shall use commercially reasonable efforts to meet these deadlines.

15 **D. Sampling and Analysis**

16 1. Miller Castings shall install a recording rain gauge capable of recording rainfall to 0.1
17 inches at the Miller Castings Facilities within thirty (30) days of the Effective Date. Miller Castings
18 shall maintain the recording rain gauge in accordance with the manufacturers' recommendations,
19 maintain records of all maintenance and rain data, and provide such rain gauge data to Plaintiff
20 with Miller Castings' Monitoring Report described in F below for the term of this Consent Decree.
21 In the event there is a dispute about the quantity of rainfall at the Facilities, the rain gauge installed
22 pursuant to this section shall be deemed to be the actual rainfall at the site.

23 2. By January 1, 2018, Miller Castings shall develop a plan for monitoring all storm water
24 and NSWDS from the Miller Castings Facilities that meets the requirements of this Consent Decree
25 and Section XI of the Permit, and incorporate same into its SWPPP.

26 3. During the life of this Consent Decree, Miller Castings shall collect samples of any
27 Qualifying Storm Event ("QSE") from at least two QSEs within the first half of each reporting
28 year (July 1 – December 31) and at least two QSEs within the second half of each reporting year

1 (January 1 – June 30) from each sampling point at the Miller Castings Facilities in conformity with
2 its Storm Water Monitoring Implementation Plan (“Monitoring Plan”) and in compliance with the
3 IGP. Should Miller Castings demonstrate full compliance with all of the NALs in Table 1 for four
4 (4) consecutive QSEs, Miller Castings may reduce sampling in compliance with XI.C.7 of the
5 2015 Storm Water Permit, except under no circumstances shall Miller Castings be permitted to
6 collect samples from less than two (2) QSEs per reporting year unless two QSEs do not occur in a
7 particular reporting year.

8 4. Miller Castings shall comply with the analytical methods as required by Section XI.B of
9 the 2015 Storm Water Permit as more fully described in the Monitoring Plan.

10 5. Miller Castings shall request that results of all sample analyses required by this Consent
11 Decree be reported to it within fifteen (15) days of laboratory receipt of the sample.

12 6. Miller Castings shall provide the complete laboratory results of all samples collected as
13 required by this Consent Decree to Plaintiff concurrently with the posting of same on SMARTS
14 or no later than thirty (30) days from receipt of the sample results from the laboratory, whichever
15 is sooner.

16 **E. Visual Observations.** During the life of this Consent Decree, Miller Castings shall conduct and
17 document visual observations pursuant to Section XI.A of the 2015 Storm Water Permit and as more fully
18 described in the Miller Castings SWPPP.

19 **F. Annual Comprehensive Facilities Compliance Evaluation**

20 1. Miller Castings shall submit an Annual Comprehensive Facilities Compliance Evaluation
21 (“Annual Evaluation”) to Plaintiff no later than June 15, of each year that contains the following
22 information:

23 (a) A review of all sampling, visual observations, and inspection records conducted during the
24 previous reporting year;

25 (b) An inspection of all areas of industrial activity and associated potential pollutant sources
26 for evidence of, or the potential for, pollutants entering the storm water conveyance system;

27 (c) An inspection of all drainage areas previously identified as having no exposure to industrial
28 activities and materials in accordance with the definitions in Section XVII of the 2015

1 Storm Water Permit;

- 2 (d) An inspection of equipment needed to implement the BMPs identified in the SWPPP;
- 3 (e) An inspection of any structural BMPs identified in the SWPPP;
- 4 (f) A review and effectiveness assessment of all BMPs identified in the SWPPP for each area
- 5 of industrial activity and associated potential pollutant sources to determine if the BMPs
- 6 are properly designed, implemented, and are effective in reducing and preventing
- 7 pollutants in industrial storm water discharges and authorized NSWDS;
- 8 (g) A Compliance Checklist that indicates whether Miller Castings complies with and has
- 9 addressed all applicable requirements of the Permit;
- 10 (h) An explanation for any non-compliance of requirements within the reporting year, as
- 11 indicated in the Compliance Checklist;
- 12 (i) An identification, including page numbers and/or sections, of all revisions made to the
- 13 SWPPP within the reporting year;
- 14 (j) The date(s) of the Annual Evaluation; and
- 15 (k) An appendix including the following information:
- 16 (i) All rain gauge data for the Wet Season; and
- 17 (ii) Records of storm water samples collected at the Miller Castings Facilities for QSEs
- 18 Miller Castings is required to sample pursuant to the terms of this Consent Decree.

19 2. By January 1, 2018, or forty-five (45) days after the Effective Date, whichever is later,

20 Miller Castings shall revise its Monitoring Plan for the Miller Castings Facilities to incorporate all

21 sampling, analysis, observation, and reporting requirements of this Consent Decree and the Permit.

22 3. Miller Castings shall submit the revisions to its Monitoring Plan for the Miller Castings

23 Facilities to Plaintiff for review and comment. Plaintiff shall provide comments, if any, to Miller

24 Castings within thirty (30) days of receipt of the Monitoring Plan. Miller Castings shall incorporate

25 Plaintiff' comments into the Monitoring Plan, or shall justify in a writing prepared by a QISP why

26 any comment is not incorporated within fifteen (15) days of receiving comments. Any disputes

27 over the adequacy of the revised Monitoring Plan shall be resolved pursuant to the dispute

28 resolution provisions of this Consent Decree, set out in Section VI below.

1 **G. Storm Water Pollution Prevention Plan Revisions**

2 1. By January 1, 2018, or forty-five (45) days after the Effective Date, whichever is later,
3 Miller Castings shall revise the SWPPP(s) for the Miller Castings Facilities to include all BMPs
4 required by the Consent Decree and comply with all provisions of the Permit.

5 2. Miller Castings shall submit the revised SWPPP(s) to Plaintiff for review and comment.
6 Plaintiff shall provide comments, if any, to Miller Castings within sixty (60) days of receipt of the
7 SWPPP(s). Miller Castings shall incorporate Plaintiff' comments into the SWPPP(s), or shall
8 justify in a writing prepared by a QISP why any comment is not incorporated within fifteen (15)
9 days of receiving comments. Any disputes as to the adequacy of the revised SWPPP shall be
10 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in Section
11 VI below.

12 3. Miller Castings shall engage a QISP to revise the SWPPP(s) for the Miller Castings
13 Facilities if there are any changes in the Miller Castings Facilities' operations, including, but not
14 limited to, changes to storm water discharge point(s) or revisions and/or additions to the BMPs
15 implemented pursuant to the IGP.

16 4. Throughout the term of this Consent Decree, Miller Castings shall submit any SWPPP(s)
17 revisions made pursuant to the requirements of this paragraph to Plaintiff for review and comment
18 within ten (10) days of the SWPPP revision. Plaintiff will provide comments, if any, to Miller
19 Castings within thirty (30) days of receipt of such revised SWPPP. Miller Castings shall
20 incorporate Plaintiff's comments into any revised SWPPP, or shall justify in a writing prepared by
21 a QISP as to why any comment is not incorporated within thirty (30) days of receiving comments.
22 Any disputes as to the adequacy of the revised SWPPP(s) shall be resolved pursuant to the dispute
23 resolution provisions of this Consent Decree, set out in Section VI below.

24 **H. Employee Training**

25 1. In addition to Section III.A.(3)(a)(vi) above, within ninety (90) days of the Effective Date
26 of this Consent Decree, Miller Castings shall develop and implement a training program, in
27 compliance with Section X.H.1.f., X.H.1.g., and IX of the 2015 Storm Water Permit ("Training
28 Program"). At a minimum, the Training Program shall include at least the following:

1 (a) **Language.** Miller Castings shall conduct the Training Program in English. If there are any
2 Team Members who do not understand English, then Miller Castings shall conduct the
3 Training Program also in the language or languages in which those identified employees
4 participating in the Training Program understand.

5 (b) **Non-Storm Water Discharges.** Miller Castings shall train all Team Members on the 2015
6 Storm Water Permit's prohibition of NSWDS, so that employees know what NSWDS are,
7 that NSWDS can result from improper surface washing or dust control methods, and how
8 to detect and prevent NSWDS to ensure compliance with this Consent Decree and the 2015
9 Storm Water Permit.

10 (c) **BMPs.** Miller Castings shall train all Team Members on BMP implementation and
11 maintenance to ensure that BMPs are implemented effectively to prevent the exposure of
12 pollutants to storm water, to prevent the discharge of contaminated storm water, and to
13 ensure the proper treatment of storm water at the Miller Castings Facilities.

14 (d) **Storm Water Sampling.** Miller Castings shall designate an adequate number of Team
15 Members to collect storm water samples from each discharge location as required by this
16 Consent Decree. The training shall include the proper sampling protocols, including chain
17 of custody requirements, to ensure storm water samples are properly collected, stored, and
18 submitted to a certified laboratory.

19 (e) **Visual Observation Training.** Miller Castings shall provide training to all Team Members
20 at the Miller Castings Facilities regarding visual observations pursuant to this Consent
21 Decree and the Permit.

22 2. Training shall be provided by a QISP who is familiar with the requirements of this Consent
23 Decree and the IGP. The training shall be repeated annually or as necessary to ensure that all such
24 Team Members are familiar with the requirements of this Consent Decree, the IGP, and the Miller
25 Castings Facilities' SWPPP(s) or Monitoring Plan(s).

26 3. Miller Castings shall maintain training records to document compliance with this Section,
27 and shall provide Plaintiff with a copy of these records in its annual monitoring and reporting
28 document described above.

1 **IV. MONITORING AND REPORTING**

2 **A. Site Inspections.**

3 1. Every year during the life of this Consent Decree, up to three (3) of Plaintiff
4 representatives may participate in the Miller Castings Facilities Annual Evaluation site inspections
5 as more fully described in section XV of the 2015 Storm Water Permit (the "Site Inspection") The
6 site inspections shall occur during normal business hours. Miller Castings shall provide Plaintiff
7 and Plaintiff's counsel of record with at least seven business' day notice prior to the Site
8 Inspection. Notice shall be provided by electronic mail to Plaintiff's counsel of record. Plaintiff
9 shall respond by electronic mail and state the names of all persons that Plaintiff will bring to the
10 Site Inspection.

11 2. Plaintiff shall provide Miller Castings with any comments regarding the Site Inspection
12 within seventy-two (72) hours of the completion thereof. Said comments shall be prepared, signed
13 and certified by Plaintiff's designated QISP. Miller Castings shall respond to Plaintiff's comment
14 within thirty (30) days from which they are received, however, Miller Castings is not obligated to
15 respond to any comments regarding the Site Inspection received after seventy-two hours has
16 passed.

17 **B. Compliance Monitoring and Oversight.** Miller Castings shall make a onetime payment of Five
18 Thousand Dollars (\$5,000.00) to compensate Plaintiff for costs and fees to be incurred for monitoring
19 Miller Castings' compliance with this Consent Decree. Payment shall be made within five (5) business
20 days of the Effective Date payable to "Brodsky & Smith, LLC" via U.S. Mail.

21 **C. Action Plan Payment.** With the exception of the Level 1 ERA Action Plan submittal discussed in
22 Section III.A, *supra*, Miller Castings shall pay Five Thousand Dollars (\$5,000.00) each time an Action
23 Plan is submitted to the United States Treasury care of Alicia Kolaian, Budget Analyst, Environment &
24 Natural Resources Division, Executive Office, P.O. Box 7611, Ben Franklin Station, Washington, D.C.
25 20044-7611. Payments shall be submitted simultaneously with the submittal of the Action Plan.

26 **D. Miller Castings Document Provision.** During the life of this Consent Decree, Miller Castings
27 shall copy Plaintiff on all documents related to storm water quality at the Miller Castings Facilities that
28 are submitted to the Regional Board, the State Board, and/or any state or local agency, county, or

1 municipality. Such reports and documents shall be provided to Plaintiff on the date they are sent to the
2 agencies, counties, and/or municipalities. Any correspondence related to Miller Castings' compliance with
3 the Permit or storm water quality received by Miller Castings from any regulatory agency, state or local
4 agency, county, or municipality shall be provided to Plaintiff within ten (10) days of receipt by Miller
5 Castings. Provided, however, that this Consent Decree shall not require disclosure of any information or
6 documents subject to the Attorney Client Privilege or the Attorney Work Product doctrine.

7 **V. ENVIRONMENTAL PROJECT & REIMBURSEMENT OF LITIGATION FEES & COSTS**

8 **A. Environmental Project.** To remediate the alleged environmental harms resulting from non-
9 compliance with the 1997 Storm Water Permit and 2015 Storm Water Permit alleged in the Complaint,
10 Miller Castings agrees to make a payment of Five Thousand Dollars (\$5,000.00) to University of
11 California San Diego Extension Services to fund tuition grants for owners and employees of small
12 businesses⁶ affected by the stormwater permit. The payments shall be made within five (5) business days
13 of the Effective Date payable to "Regents of the University of California, UCSD" and mailed to UC San
14 Diego Extension, attention Laura Fandino, 8950 Villa La Jolla Drive, Suite A204, La Jolla, CA 92037-
15 1712.

16 **B. Reimbursement of Attorneys' Fees and Costs.** Miller Castings shall pay a total of Forty
17 Thousand Dollars (\$40,000.00) to "Brodsky & Smith, LLC" for their investigation fees and costs,
18 expert/consultant fees and costs, and reasonable attorneys' fees incurred as a result of investigating and
19 preparing the lawsuit and negotiating this Consent Decree. Payment shall be made payable to "Brodsky
20 & Smith, LLC" within five (5) business days of the Effective Date via U.S. Mail.

21 **VI. DISPUTE RESOLUTION AND RETENTION OF JURISDICTION**

22 **A. Continuing Jurisdiction.** This Court shall retain jurisdiction over this matter until the Termination
23 Date defined above for the purposes of implementing and enforcing the terms and conditions of this
24 Consent Decree and adjudicating all disputes among the Parties that may arise under the provisions of this
25 Consent Decree, unless a Party files and is granted a timely motion requesting an extension of time for
26

27 ⁶ Small Businesses as used herein shall mean businesses that employs no more than fifty (50)
28 people per calendar year.

1 the Court to retain jurisdiction. The Court shall have the power to enforce this Consent Decree with all
2 available legal and equitable remedies, including contempt.

3 **B. Meet and Confer.** A Party to this Consent Decree shall invoke the dispute resolution procedures
4 of this Section by notifying the other Party in writing of the matter(s) in dispute. The Settling Parties shall
5 then meet and confer in good faith (either telephonically or in person) in an attempt to resolve the dispute
6 informally over a period of ten (10) days from the date of the notice. The Parties may elect to extend this
7 time in an effort to resolve the dispute without court intervention.

8 **C. Dispute Resolution.** If the Parties cannot resolve a dispute by the end of meet and confer informal
9 negotiations, then the parties shall attempt to settle the dispute through mediation provided by the
10 American Arbitration Association (“AAA”) pursuant to AAA’s Commercial Mediation Provisions in
11 effect at the time the act or acts being disputed occurred.

12 **D. Burden of Proof.** In any dispute resolution proceeding, the Party invoking the dispute resolution
13 procedures provided herein shall have the burden of demonstrating that the other Party has failed to meet
14 its obligations as set forth herein.

15 **E. Enforcement Fees and Costs.** If formal dispute resolution is undertaken, then litigation costs and
16 fees incurred in conducting such shall be awarded to the prevailing party.

17 **VII. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

18 **A. Plaintiff’s Public Release of Claims.** This Consent Judgment is a final and binding resolution
19 between Plaintiff, on his own behalf, and on behalf of the public and in the public interest, and Miller
20 Castings, and their parents, subsidiaries, affiliated entities under common ownership, directors, officers,
21 agents, employees, attorneys, if any (collectively “Releasees”), and shall have a preclusive effect such that
22 no other person or entity, whether purporting to act in his, her, or its interests or the public interest shall
23 be permitted to pursue and/or take any action with respect to any violation of the CWA that was alleged
24 in the Complaint, or that could have been brought pursuant to the Notice.

25 **B. Plaintiff’s Release of Additional Claims.** As to Plaintiff for and in his individual capacity only,
26 this Consent Judgment shall have preclusive effect such that he shall not be permitted to pursue and/or
27 take any action with respect to any other statutory or common law claim, to the fullest extent that any of
28 the foregoing were or could have been asserted by him against Miller Castings or the Releasees based on

1 the facts alleged in the Complaint and the Notice, whether or not based on actions committed by Miller
2 Castings.

3 **C. Waiver of Rights Under Section 1542 of the California Civil Code**

4 1. Plaintiff acting in his individual capacity waives all rights to institute any form of legal
5 action, and releases all claims against Miller Castings, and the Releasees, (referred to collectively
6 in this Section as the “Claims”). In furtherance of the foregoing, Plaintiff waives any and all rights
7 and benefits which he now has, or in the future may have, conferred upon him with respect to the
8 Claims by virtue of the provisions of § 1542 of the California Civil Code, which provides as
9 follows:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES
11 NOT KNOW OR SUSPECT EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
12 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
13 SETTLEMENT WITH THE DEBTOR.

14 2. Plaintiff understands and acknowledge that the significance and consequence of this waiver
15 of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising out of or
16 resulting from, or related directly or indirectly to, in whole or in part, the facts in the Complaint,
17 Plaintiff will not be able to make any claim for those damages against Releasees.

18 **D. Miller Castings’ Release of Plaintiff.** Miller Castings, on behalf of itself, its past and current
19 agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against
20 Plaintiff, his attorney, and other representatives for any and all actions taken or statements made (or those
21 that could have been taken or made) by Plaintiff and his attorney and other representatives, whether in the
22 course of investigating Claims or Otherwise.

23 **E. Parties’ Release.** Unless specifically provided for in this Consent Decree, the Parties, on their own
24 behalf and on behalf of their current and former officers, directors, employees, and each of their successors
25 and assigns, and their agents, and other representatives release all persons including, without limitation,
26 all other Parties to this Consent Decree (and each of their direct and indirect parent and subsidiary
27 companies and affiliates, and their respective current and former officers, directors, members, employees,
28 shareholders, and each of their predecessors, successors, and assigns, and each of their agents, attorneys,

1 consultants, and other representatives) from any additional attorney's fees or expenses related to the
2 resolution of this matter.

3 **F.** Nothing in this Consent Decree limits or otherwise affects any Party's right to address or take any
4 position that it deems necessary or appropriate in any formal or informal proceeding before the State
5 Board, Regional Board, EPA, or any other administrative body on any other matter relating to Miller
6 Castings' compliance with the 2015 Storm Water Permit or the Clean Water Act occurring or arising after
7 the effective date of this Consent Decree.

8 **VIII. MISCELLANEOUS PROVISIONS**

9 **A. No Admission of Liability.** Neither this Consent Decree, the implementation of additional BMPs,
10 nor any payment pursuant to the Consent Decree shall constitute or be construed as a finding, adjudication,
11 admission, or acknowledgment of any fact, law, or liability, nor shall it be construed as an admission of
12 violation of any law, rule, or regulation. Miller Castings maintains and reserves all defenses they may
13 have to any alleged violations that may be raised in the future.

14 **B. Construction.** The language in all parts of this Consent Decree shall be construed according to its
15 plain and ordinary meaning, except as to those terms defined in the 2015 Storm Water Permit, the Clean
16 Water Act, or specifically herein.

17 **C. Choice of Law and Venue.** The laws of the United States shall govern this Consent Decree, with
18 venue proper only in the Central District of California.

19 **D. Severability.** In the event that any provision, paragraph, section, or sentence of this Consent
20 Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be
21 adversely affected.

22 **E. Correspondence and Notices.** Any and all notices and/or correspondence between the Parties
23 provided for or permitted under this Consent Decree shall be in writing and personally delivered or sent
24 by:

- 25 1. First-class (registered or certified) mail return receipt requested; or
- 26 2. Overnight or two-day courier; or
- 27 3. By email with confirmed receipt only (thus at the risk of the email sender); on any Party
28 by the other Party to the following addresses:

1 If to Plaintiff:

2 Evan J. Smith, Esquire

3 Brodsky & Smith, LLC

4 Two Bala Plaza, Suite #510

5 Bala Cynwyd, PA 19004

6 T: 877.354.2590

7 F: 310.247.0160

8 Email: esmith@brodsky-smith.com

9
10 If to Miller Castings:

11 Kimberly D. Lewis, Esquire

12 Ervin Cohen & Jessup, LLP

13 9401 Wilshire Blvd., 9th Floor

14 Beverly Hills, CA 90212-2974

15 T: 310.281.6332

16 F: 310.859.2325

17 Email: klewis@ecjlaw.com

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19 Any change of address or addresses shall be communicated in the manner described above for giving
20 notices.

21 **F. Counterparts.** This Consent Decree may be executed in any number of counterparts, all of which
22 together shall constitute one original document. Telecopy, email of a .pdf signature, or facsimile copies
23 of original signature shall be deemed to be originally executed counterparts of this Consent Decree.

24 **G. Modification of the Consent Decree.** This Consent Decree, and any provisions herein, may not
25 be changed, waived, discharged, or terminated unless by a written instrument, signed by the Settling
26 Parties, or upon motion of any Party as provided by law and upon an entry of a modified Consent Judgment
27 by the Court. If any Settling Party wishes to modify any provision of this Consent Decree, the Settling
28 Party must notify the other Settling Party in writing at least twenty-one (21) days prior to taking any step
to implement the proposed change.

1 **H. Full Settlement.** This Consent Decree contains the sole and entire agreement and understand of
2 the Parties with respect to the entire subject matter hereof, and any and all discussions, negotiations,
3 commitments and understandings related thereto. No representations, oral or otherwise, express or
4 implied, other than those contained herein have been made by any party hereto. No other agreements not
5 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

6 **I. Integration Clause.** This is an integrated Consent Decree. This Consent Decree is intended to be
7 a full and complete statement of the terms of the Consent Decree between the Settling Parties and
8 expressly supersedes any and all prior oral or written Consent Decrees, covenants, representations, and
9 warranties (express or implied) concerning the subject matter of this Consent Decree.

10 **J. Authority of Counsel.** The undersigned representatives for Plaintiff and Miller Castings each
11 certify that he/she is fully authorized by the party whom he/she represents to approve this Consent Decree
12 as to form.

13 **K. Authority.** Miller Castings certifies that its undersigned representative is fully authorized to enter
14 into this Consent Decree, to execute it on behalf of Miller Castings, and to legally bind Miller Castings to
15 its terms.

16 **L. Agreement to be Bound.** The Settling Parties, including any successors or assigns, agree to be
17 bound by this Consent Decree and not to contest its validity in any subsequent proceeding to implement
18 or enforce its terms.

19 **IX. COURT APPROVAL**

20 The Parties hereby respectfully request that the Court promptly approve and enter this Consent Decree.
21 Upon entry of this Consent Decree, Plaintiff and Defendant waive their respective rights to a hearing or
22 trial on the allegations of the Complaint and Notice which are at issue in this action. If this Consent Decree
23 is not approved by the Court, it shall be of no force and effect, and it may not be used in any proceeding
24 for any purpose.

25 ~~IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as of the date~~
26 ~~first set forth below.~~

1 **IT IS SO ORDERED.**

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5 Date: November 13, 2018

6 _____
7 The Honorable Andre Birotte Jr.
8 United States District Court Judge
9 Central District of California
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