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JS-6

5 Attorneys for Defendant
 MILL MAN STEEL, INC.
 6

7
 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

10 CENTER FOR COMMUNITY
 ACTION AND ENVIRONMENTAL
 11 JUSTICE, a non-profit corporation,

Case No.: 5:17-CV-00226 JGB
 (DTBx)

12 Plaintiff,

Assigned to Hon. JESUS G. BERNAL

13 v.

CONSENT DECREE

14 MILL MAN STEEL, INC., a Colorado
 corporation,

Complaint Filed: February 8, 2017

15 Defendant.
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1 **CONSENT DECREE**

2 This Consent Decree (“Consent Decree”) is entered into between the Center
3 for Community Action and Environmental Justice (“CCA EJ”) and Mill Man Steel,
4 Inc. (“Mill Man”) (all parties collectively are referred to as the “SETTLING
5 PARTIES”) with respect to the following facts and objectives:

6 **RECITALS**

7 **WHEREAS**, CCA EJ is a 501(c)(3) non-profit, public benefit corporation
8 organized under the laws of the State of California, dedicated to working with
9 communities to improve the social and natural environment. Penny Newman is the
10 Executive Director of CCA EJ;

11 **WHEREAS**, Mill Man owns and operates a steel processing and fabrication
12 facility located at 15585 Arrow Route in Fontana, California (the “Facility”).
13 Through June 30, 2015, the Facility has operated pursuant to State Water Resources
14 Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge
15 Elimination System General Permit No. CAS000001, Waste Discharge
16 Requirements for Discharges of Storm Water Associated with Industrial Activities
17 Excluding Construction Activities. Beginning on July 1, 2015, the Facility has
18 operated pursuant to State Water Resources Control Board Water Quality Order No.
19 2014-0057-DWQ, National Pollutant Discharge Elimination System General Permit
20 No. CAS000001 (hereinafter “General Permit”). A map of the Facility is attached
21 hereto as Exhibit A and incorporated by reference;

22 **WHEREAS**, on or about November 9, 2016, CCA EJ provided Mill Man with
23 a Notice of Violations and Intent to File Suit (“60-Day Notice Letter”) under
24 Section 505 of the Federal Water Pollution Control Act (the “Act” or “Clean Water
25 Act”), 33 U.S.C. § 1365;

26 **WHEREAS**, on February 6, 2017, CCA EJ filed its Complaint in the United
27 States District Court for the Central District of California (Center for Community
28 Action and Environmental Justice v. Mill Man Steel, Inc., Case No. 5:17-cv-00226-

1 JGB-DTB). A true and correct copy of the Complaint, including the 60-Day Notice
2 Letter, is attached hereto as Exhibit B and incorporated by reference;

3 **WHEREAS**, Mill Man denies any and all of CCAEJ's claims in its 60-Day
4 Notice Letter and Complaint;

5 **WHEREAS**, CCAEJ and Mill Man, through their authorized representatives
6 and without either adjudication of CCAEJ's claims or admission by Mill Man of any
7 alleged violation or other wrongdoing, have chosen to resolve in full CCAEJ's
8 allegations in the 60-Day Notice Letter and Complaint through settlement and avoid
9 the cost and uncertainties of further litigation; and

10 **WHEREAS**, CCAEJ and Mill Man have agreed that it is in their mutual
11 interest to enter into this Consent Decree setting forth the terms and conditions
12 appropriate to resolving CCAEJ's allegations set forth in the 60-Day Notice Letter
13 and Complaint.

14 **NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE**
15 **SETTLING PARTIES AND IS HEREBY ORDERED AND DECREED BY THIS**
16 **COURT AS FOLLOWS:**

17 1. This Court has jurisdiction over the subject matter of this action
18 pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. §135(a);

19 2. Venue is proper in the Central District of California pursuant to Section
20 505(c)(1) of the Clean Water Act, 33 U.S.C. §1365(c)(1) because the Mill Man
21 facility is located within this District;

22 3. The term "Effective Date," as used in this Consent Decree, shall mean
23 the date that this Consent Decree is entered by the Court.

24 4. The Court shall maintain jurisdiction through the Termination Date, as
25 defined in Paragraph 27 below, or through the conclusion of any proceeding to
26 enforce this Consent Decree, or until the completion of any payment or affirmative
27 duty required by this Consent Decree.

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COMMITMENTS OF CCAEJ

5. **Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar days of the Agency Approval Date, as defined in Paragraph 23 below, CCAEJ shall file a Stipulation to Dismiss and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure 41(a)(2) with the United States District Court for the Central District of California (“District Court”), with this Consent Decree attached and incorporated by reference, specifying that CCAEJ is dismissing with prejudice all claims in CCAEJ’s Complaint.

COMMITMENTS OF MILL MAN

6. **Compliance with General Permit.** Mill Man agrees to operate the Facility in compliance with the applicable requirements of the General Permit and the Clean Water Act.

7. **Implemented Storm Water Controls.** Mill Man shall maintain in good working order all storm water collection and treatment systems at the Facility currently installed or to be installed pursuant to this Consent Decree, including but not limited to, existing housekeeping measures.

8. **Additional Structural Best Management Practices.** By December 1, 2017, or thirty (30) days after the Effective Date, whichever is later, Mill Man shall implement the following structural best management practices (“BMPs”) to improve the storm water pollution prevention measures at the Facility:

(a) To infiltrate storm water discharges from the Facility, Mill Man shall implement a storm water collection area in the southwestern portion of the Facility which shall include (a) two fifty foot berms extending from the southwest corner 50’ in each direction and (b) an area extending out a 5’ radius from the corner with 2’ deep of crushed rock.

1 (b) Mill Man shall purchase and use two more Filtrexx media socks
2 (or equivalent) along the western boundary of the Facility]

3 (c) Mill Man shall install Filtrexx media socks (or equivalent) at all
4 roof down spouts at the Facility.
5

6 (d) Mill Man shall install a berm along the southern boundary and
7 southwestern corner of the Facility to prevent storm water run-on from entering the
8 Facility from the neighboring properties. The berm shall be approximately 22"-24"
9 high and a total length of 330'.

10 (e) To reduce any run on, Mill Man shall enhance the currently-
11 existing berm along the eastern boundary or implement alternative protective
12 measures to close any gaps in that berm or areas where storm water could
13 potentially breach the berm.
14

15 9. **Confirmation of New Structural BMPs.** By December 15, 2017, or
16 forty-five (45) days after the Effective Date, whichever is later, , Mill Man shall
17 confirm the installation of the measures described above in Paragraph 5 by
18 submitting digital photos to CCAEJ.

19 10. **Additional Improvements Related to Storm Water Management at**
20 **the Facility.** By December 1, , 2017, or thirty (30) days after the Effective Date,
21 whichever is later, Mill Man shall take the following steps to improve storm water
22 management at the Facility.
23

24 (a) To improve the quality of storm water as it contacts ground
25 where a piece of industrial equipment used to operate, Mill Man shall perform a
26 cleaning of the ground in the area adjacent to the southeast corner of the large
27 building located in the northeast corner of the Facility.
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1 (b) Mill Man shall create access to the Facility's storm water
2 discharge location located in the southwestern corner of the Facility. The point shall
3 be accessible such that a Facility representative can easily access and collect the
4 Facility's storm water discharges.

5 (c) Mill Man shall contact the city of Fontana by Registered Mail
6 and request that the City can re-route storm water flows from the area in the vicinity
7 of the railroad tracks along Lime Avenue that intersect Arrow Route such that storm
8 water is directed to infiltrate in the area adjacent to the railroad tracks (along Lime
9 Avenue), instead of being discharged directly onto the Facility. This
10 communication shall include photos and videos taken during rain events at the
11 Facility.

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13 11. **Confirmation of Additional Improvements.** By December 15, 2017
14 or forty five (45) days after the Effective Date, whichever is later, Mill Man shall
15 confirm the installation of the measures described above in Paragraphs 7(a) and 7(b)
16 by submitting digital photos to CCAEJ. By January 15, 2017, or seventy-five (75)
17 days after the Effective Date, whichever is later, Mill Man shall provide an update
18 on Mill Man's request to the city of Fontana pursuant to Paragraph 7(c). Mill Man
19 shall provide regular updates, or upon request by CCAEJ, until the completion of
20 said request to the city of Fontana.

21 12. **Monitoring of Storm Water Discharges.** Mill Man shall collect and
22 analyze storm water discharges from the Facility in accordance with the General
23 Permit and this Consent Decree for, at a minimum, pH, total suspended solids, oil
24 and grease, aluminum, nitrate + nitrite as nitrogen, and iron.

25
26 13. **Monitoring Results.** Results from the Facility's sampling and analysis
27 during the term of this Consent Decree shall be uploaded to the State Water
28 Resources Control Board's ("State Board") Storm Water Multiple Application and

1 Report Tracking System (“SMARTS”) in accordance with the requirements of the
2 General Permit. Within seven (7) days of uploading said results, Mill Man shall
3 provide notice to CCAEJ via e-mail that said results have been uploaded to
4 SMARTS.

5
6 14. **Meet and Confer Regarding Exceedance of NALs.** If the Facility’s
7 storm water sampling results during the 2017-2018 and/or 2018-2019 reporting
8 years indicate that the average of the analytical results for a particular parameter
9 indicates that storm water discharges from the Facility exceed the annual NALs (as
10 set forth in the General Permit) or if two or more analytical results from samples
11 taken for any parameter within the 2017-2018 or 2018-2019 reporting years exceed
12 the instantaneous maximum NAL, Mill Man agrees to take responsive actions to
13 improve its storm water management practices, including re-evaluating its structural
14 and non-structural BMPs and considering implementing additional BMPs aimed at
15 reducing levels observed in storm water samples.

16 In furtherance of that objective, Mill Man shall prepare a written statement
17 (“Action Plan”) discussing:

- 18 (a) Any exceedance or exceedances of NALs;
- 19 (b) An explanation of the possible cause(s) and/or source(s) of any
20 exceedance; and
- 21 (c) Responsive actions to improve its storm water management
22 practices, including modified or additional feasible BMPs to be considered to further
23 reduce the possibility of future exceedance(s), and the proposed dates that such
24 actions will be taken (“Additional Measures”).

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26 Such Memorandum shall be e-mailed and sent via first class mail to CCAEJ
27 not later than July 30th during each year of this Consent Decree.
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1 15. **Meet and Confer Process.** Upon receipt of the Action Plan, CCAEJ
2 may review and comment on any identified or omitted Additional Measures. If
3 requested by CCAEJ within thirty (30) days of receipt of such Action Plan, CCAEJ
4 and Mill Man shall meet and confer to discuss the contents of the Action Plan and
5 the adequacy of proposed measures to improve the quality of the Facility’s storm
6 water to levels at or below the NALs. If requested by CCAEJ within thirty (30)
7 days of receipt of such Action Plan, CCAEJ and Mill Man shall meet and confer and
8 conduct a site inspection within sixty (60) days after the due date of the Action Plan
9 to discuss the contents of the Action Plan and the adequacy of proposed measures to
10 improve the quality of the Facility’s storm water to levels at or below the NALs. If
11 within twenty-one (21) days of the parties meeting and conferring, the parties do not
12 agree on the adequacy of the Additional Measures set forth in the Action Plan, the
13 SETTLING PARTIES may agree to seek a settlement conference with the
14 Magistrate Judge assigned to this action pursuant to Paragraphs 28 and 29 below. If
15 the SETTLING PARTIES fail to reach agreement on Additional Measures, CCAEJ
16 may bring a motion before the District Court consistent with Paragraphs 28 and 29
17 below. If CCAEJ does not request a meet and confer regarding the Action Plan
18 within the thirty (30) day period provided for in this paragraph, CCAEJ shall waive
19 any right to object to such Action Plan pursuant to this Consent Decree. The Parties
20 may agree in writing to extend any dates contained in this paragraph in order to
21 further this paragraph’s meet and confer procedure.

22 16. Any concurrence or failure to object by CCAEJ with regard to the
23 reasonableness of any Additional Measures required by this Consent Decree or
24 implemented by Mill Man shall not be deemed to be an admission of the adequacy
25 of such measures should they fail to bring the Facility’s storm water discharges into
26 compliance with applicable water quality criteria or the BAT/BCT requirements set
27 forth in the General Permit.
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1 **17. Provision of Documents and Reports.** During the life of this Consent
2 Decree, Mill Man shall provide CCAEJ with a copy of all documents submitted to
3 the Regional Board or the State Board concerning the Facility’s storm water
4 discharges, including but not limited to all documents and reports submitted to the
5 Regional Board and/or State Board as required by the General Permit. Such
6 documents and reports shall be mailed to CCAEJ contemporaneously with
7 submission to such agency. Alternatively, to the extent that Mill Man submits such
8 documents to the Regional Board or State Board via SMARTS, Mill Man may
9 satisfy this requirement by providing notice to CCAEJ via e-mail that said results
10 have been uploaded to SMARTS within seven (7) days of uploading said results.

11 **18. Amendment of Storm Water Pollution Prevention Plan**
12 **(“SWPPP”).** Within sixty (60) days after the District Court’s entry of the Order,
13 Mill Man shall amend the Facility’s SWPPP to incorporate all changes,
14 improvements, sample log forms, and best management practices set forth in or
15 resulting from this Consent Decree. Mill Man shall ensure that all maps, tables, and
16 text comply with the requirements of the General Permit. Mill Man shall ensure that
17 the SWPPP describes all structural and non-structural BMPs and details the
18 measures to be installed. A copy of the amended SWPPP shall be provided to
19 CCAEJ within thirty (30) days of completion.

20 **19. Mitigation Payment.** In recognition of the good faith efforts by Mill
21 Man to comply with all aspects of the General Permit and the Clean Water Act, and
22 in lieu of payment by Mill Man of any penalties, which have been disputed but may
23 have been assessed in this action if it had been adjudicated adverse to Mill Man, the
24 SETTLING PARTIES agree that Mill Man will pay the sum of twenty-five
25 thousand five hundred dollars (\$25,500) to the Rose Foundation for Communities
26 and the Environment (“Rose Foundation”) for the sole purpose of providing grants
27 to environmentally beneficial projects relating to water quality improvements in the
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1 Santa Ana River watershed. Payment shall be provided to the Rose Foundation as
2 follows: Rose Foundation, 1970 Broadway, Suite 600, Oakland, CA 94607, Attn:
3 Tim Little. Payment shall be made by Mill Man to the Rose Foundation within
4 thirty (30) calendar days of the District Court's entry of the Order dismissing the
5 action described in Paragraph 2 of this Consent Decree. Mill Man shall copy
6 CCAEJ with any correspondence and a copy of the check sent to the Rose
7 Foundation. The Rose Foundation shall provide notice to the SETTLING PARTIES
8 within thirty (30) days of when the funds are dispersed by the Rose Foundation,
9 setting forth the recipient and purpose of the funds.

10 20. **Fees, Costs, and Expenses.** As reimbursement for CCAEJ's
11 investigative, expert and attorneys' fees and costs, Mill Man shall pay CCAEJ the
12 sum of twenty-four thousand dollars (\$24,000). Payment shall be made by Mill
13 Man within thirty (30) calendar days of the District Court's entry of the Order
14 dismissing the action described in Paragraph 2 of this Consent Decree. Payment by
15 Mill Man to CCAEJ shall be made in the form of a single check payable to "Lozeau
16 Drury LLP," and shall constitute full payment for all costs of litigation, including
17 investigative, expert and attorneys' fees and costs incurred by CCAEJ that have or
18 could have been claimed in connection with CCAEJ's claims, up to and including
19 the District Court's entry of the Order.

20
21 21. **Compliance Oversight Costs.** As reimbursement for CCAEJ's future
22 fees and costs that will be incurred in order for CCAEJ to monitor Mill Man's
23 compliance with this AGREEMENT and to effectively meet and confer and
24 evaluate storm water monitoring results for the Facility, Mill Man agrees to
25 reimburse CCAEJ for its reasonable fees and costs incurred in overseeing the
26 implementation of this AGREEMENT up to but not exceeding three thousand
27 dollars (\$3,000) per reporting year. Fees and costs reimbursable pursuant to this
28 paragraph may include, but are not limited to, those incurred by CCAEJ or its

1 counsel to review water quality sampling reports, review annual reports, discussion
2 with representatives of Mill Man concerning potential changes to compliance
3 requirements, preparation and participation in meet and confer sessions and
4 mediation, and water quality sampling. CCAEJ shall provide an invoice containing
5 an itemized description for any fees and costs incurred in overseeing the
6 implementation of this AGREEMENT during the prior reporting year. Up to two
7 annual payments (one addressing any monitoring associated with the 2017-2018
8 reporting year, and one addressing monitoring associated with the 2018-2019
9 reporting year) shall be made payable to “Lozeau Drury LLP” within thirty (30)
10 days of receipt of an invoice from CCAEJ that contains an itemized description of
11 fees and costs incurred by CCAEJ to monitor implementation of the AGREEMENT
12 during the previous twelve (12) months or the previous period between invoices.

13
14 22. **Review by Federal Agencies.** CCAEJ shall submit this Consent
15 Decree to the U.S. EPA and the U.S. Department of Justice (hereinafter, the
16 “Agencies”) via certified mail, return receipt requested, within five (5) days after the
17 Effective Date of this Consent Decree for review consistent with 40 C.F.R. § 135.5.
18 The Agencies’ review period expires forty-five (45) days after receipt of the
19 Consent Decree by both Agencies, as evidenced by the return receipts and the
20 confirming correspondence of DOJ. In the event that the Agencies comment
21 negatively on the provisions of this Consent Decree, CCAEJ and Mill Man agree to
22 meet and confer to attempt to resolve the issue(s) raised by the Agencies. If CCAEJ
23 and Mill Man are unable to resolve any issue(s) raised by the Agencies in their
24 comments, CCAEJ and Mill Man agree to expeditiously seek a settlement
25 conference with the Magistrate Judge assigned to this matter to resolve the issue(s).
26 If the SETTLING PARTIES cannot resolve the issue(s) through a settlement
27 conference, this Consent Decree shall be null and void. The date of (a) the
28 Agencies’ unconditioned approval of this Consent Decree, (b) the expiration of the

1 Agencies' review period, or (c) the SETTLING PARTIES' resolution of all issues
2 raised by the Agencies, whichever is earliest, shall be defined as the "Agency
3 Approval Date."

4 **NO ADMISSION OR FINDING**

5 23. Neither this Consent Decree nor any payment pursuant to the Consent
6 Decree nor compliance with this Consent Decree shall constitute evidence or be
7 construed as a finding, adjudication, or acknowledgment of any fact, law or liability,
8 nor shall it be construed as an admission of violation of any law, rule or regulation.
9 However, this Consent Decree may constitute evidence in actions seeking
10 compliance with this Consent Decree. Evidence of the payment amount may be
11 used to enforce the payment provisions of this Consent Decree.
12

13 **MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

14 24. In consideration of the above, and except as otherwise provided by this
15 Consent Decree, the SETTLING PARTIES hereby forever and fully release each
16 other and their respective parents, affiliates, subsidiaries, divisions, insurers,
17 successors, assigns, and current and former employees, attorneys, officers, directors,
18 members, shareholders, and agents from any and all claims and demands of any
19 kind, nature, or description whatsoever, known and unknown, and from any and all
20 liabilities, damages, injuries, actions or causes of action, either at law or in equity,
21 which it may presently have, or which may later accrue or be acquired by it, arising
22 from the Complaint or Notice Letters, including, without limitation, all claims for
23 injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including
24 fees of attorneys, experts, and others), costs, expenses or any other sum incurred or
25 claimed or which could have been claimed in the Complaint or Notice Letters, for
26 the alleged failure of Defendant to comply with the Clean Water Act at the Facility,
27 up to and including the Termination Date of this Consent Decree, as defined in
28 Paragraph 27.

1 25. The SETTLING PARTIES acknowledge that they are familiar with
2 section 1542 of the California Civil Code, which provides:

3 A general release does not extend to claims which the creditor does not
4 know or suspect to exist in his or her favor at the time of executing the
5 release, which if known by him or her must have materially affected his
6 or her settlement with the debtor.

7 The SETTLING PARTIES hereby waive and relinquish any rights or benefits
8 they may have under California Civil Code section 1542 with respect to any other
9 claims against each other arising from, or related to, the allegations and claims as set
10 forth in the 60-Day Notice Letter and Complaint at the Facility up to and including
11 the Termination Date of this Consent Decree.

12 26. For the period beginning on the Effective Date and ending on the
13 Termination Date, neither CCAEJ, nor its officers, executive staff, members of its
14 Steering Committee will file or support other lawsuits, by contacting, providing
15 financial assistance or personnel time or taking any other affirmative actions, against
16 or relating to the Facility by other groups or individuals who would rely upon the
17 citizen suit provision of the Clean Water Act to challenge the Facility's compliance
18 with the Clean Water Act, or the General Permit.

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20 **TERMINATION DATE OF CONSENT DECREE**

21 27. Unless an extension is agreed to in writing by the SETTLING
22 PARTIES, this Consent Decree shall terminate on December 15, 2019 (the
23 "Termination Date"), or through the conclusion of any proceeding to enforce this
24 Consent Decree, or until the completion of any payment or affirmative duty required
25 by this Consent Decree.

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1 **DISPUTE RESOLUTION PROCEDURES**

2 28. Except as specifically noted herein, any disputes with respect to any of
3 the provisions of this Consent Decree shall be resolved through the following
4 procedure. The SETTLING PARTIES agree to first meet and confer in good faith
5 to resolve any dispute arising under this Consent Decree. In the event that such
6 disputes cannot be resolved through this meet and confer process, the SETTLING
7 PARTIES agree to request a settlement meeting before the Magistrate Judge
8 assigned to this action. In the event that the SETTLING PARTIES cannot resolve
9 the dispute by the conclusion of the settlement meeting with the Magistrate Judge,
10 the SETTLING PARTIES agree to submit the dispute via motion to the District
11 Court.

12 29. In resolving any dispute arising from this Consent Decree, the Court
13 shall have discretion to award attorneys' fees and costs to the prevailing party. The
14 relevant provisions of the then-applicable Clean Water Act and Rule 11 of the
15 Federal Rules of Civil Procedure shall govern the allocation of fees and costs in
16 connection with the resolution of any disputes before the District Court. The
17 District Court shall award relief limited to compliance orders and awards of
18 attorneys' fees and costs, subject to proof. The SETTLING PARTIES agree to file
19 any waivers necessary for the Magistrate Judge to preside over any settlement
20 conference and motion practice.

21 **GENERAL PROVISIONS**

22 30. **Force Majeure.** Mill Man will notify CCAEJ if timely
23 implementation of Mill Man's respective duties under this Consent Decree becomes
24 impossible due to circumstances beyond the control of Mill Man or its agents, and
25 which could not have been reasonably foreseen and prevented by the Mill Man's
26 exercise of due diligence. Any delays due to Mill Man's respective failure to make
27 timely and bona fide applications and to exercise diligent efforts to comply with the
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1 terms in this Consent Decree will not, in any event, be considered to be
2 circumstances beyond the Mill Man's control. Financial inability will not, in any
3 event, be considered to be circumstances beyond Mill Man's control.

4 (a) If Mill Man claims impossibility, it will notify CCAEJ in writing
5 within twenty (20) business days of the date that Mill Man discovers the event or
6 circumstance that caused or would cause non-performance with the terms of this
7 Consent Decree, or the date that Mill Man should have known of the event or
8 circumstance by the exercise of due diligence. The notice must describe the reason
9 for the non-performance and specifically refer to this section of this Consent Decree.
10 The notice must describe the anticipated length of time the non-performance may
11 persist, the cause or causes of the non-performance, the measures taken or to be
12 taken by Mill Man to prevent or minimize the non-performance, the schedule by
13 which the measures will be implemented, and the anticipated date of compliance.
14 Mill Man will adopt all reasonable measures to avoid and minimize such non-
15 performance.

16 (b) The SETTLING PARTIES will meet and confer in good faith
17 concerning the non-performance and, if the SETTLING PARTIES concur that
18 performance was or is impossible, despite the timely good faith efforts of Mill Man,
19 due to circumstances beyond the control of Mill Man that could not have been
20 reasonably foreseen and prevented by the exercise of due diligence by Mill Man,
21 new performance deadlines will be established.

22 (c) If CCAEJ disagrees with Mill Man's notice, or in the event that
23 the SETTLING PARTIES cannot timely agree on the terms of new performance
24 deadlines or requirements, either SETTLING PARTY may invoke the dispute
25 resolution process described in Paragraphs 25 and 26 of this Consent Decree. In
26 such proceeding, Mill Man will bear the burden of proving that any delay in
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1 performance of any requirement of this Consent Decree was caused or will be
2 caused by force majeure and the extent of any delay attributable to such
3 circumstances.

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5 31. **Construction.** The language in all parts of this Consent Decree shall
6 be construed according to its plain and ordinary meaning, except as to those terms
7 defined by law, in the General Permit, and the Clean Water Act or specifically
8 herein.

9 32. **Choice of Law.** This Consent Decree shall be governed by the laws of
10 the United States, and where applicable, the laws of the State of California.

11 33. **Severability.** In the event that any provision, section, or sentence of
12 this Consent Decree is held by a court to be unenforceable, the validity of the
13 enforceable provisions shall not be adversely affected.

14
15 34. **Correspondence.** All notices required herein or any other
16 correspondence pertaining to this Consent Decree shall be sent by regular, certified,
17 overnight mail, or e-mail as follows:

18 If to CCAEJ:
19 Penny Newman,
20 Executive Director
21 Center for Community Action
22 and Environmental Justice
Penny.newman@ccaaj.org
P.O. Box 33124
Riverside, CA 92519
(951) 360-8451

Copy to:
Michael R. Lozeau
michael@lozeaudrury.com
Douglas J. Chermak
doug@lozeaudrury.com
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
(510) 836-4200

23 If to Mill Man:
24 Scott W. Clary
scottclary@millmansteel.com
25 Mill Man Steel, Inc.
26 1441 Wasee Street, Suite 104
27 Denver, CO 80202
(303) 5507473

Copy to:
Albert M. Cohen
acohen@loeb.com
Loeb & Loeb LLP
10100 Santa Monica Boulevard
Suite 2200
Los Angeles, CA 90067
(310) 282-2228

1 Notifications of communications shall be deemed submitted on the date that
2 they are e-mailed, postmarked and sent by first-class mail or deposited with an
3 overnight mail/delivery service. Any change of address or addresses shall be
4 communicated in the manner described above for giving notices.

5 **35. Counterparts.** This Consent Decree may be executed in any number
6 of counterparts, all of which together shall constitute one original document.
7 Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be
8 deemed to be originally executed counterparts of this Consent Decree.

9 **36. Assignment.** Subject only to the express restrictions contained in this
10 Consent Decree, all of the rights, duties and obligations contained in this Consent
11 Decree shall inure to the benefit of and be binding upon the SETTLING PARTIES,
12 and their successors and assigns.

13 **37. Modification of the Agreement.** This Consent Decree, and any
14 provisions herein, may not be changed, waived, discharged or terminated unless by
15 a written instrument, signed by the SETTLING PARTIES.
16

17 **38. Full Settlement.** This Consent Decree constitutes a full and final
18 settlement of this matter. It is expressly understood and agreed that the Consent
19 Decree has been freely and voluntarily entered into by the SETTLING PARTIES
20 with and upon advice of counsel.
21

22 **39. Integration Clause.** This is an integrated Consent Decree. This
23 Consent Decree is intended to be a full and complete statement of the terms of the
24 agreement between the SETTLING PARTIES and expressly supersedes any and all
25 prior oral or written agreements covenants, representations and warranties (express
26 or implied) concerning the subject matter of this Consent Decree.
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1 40. **Authority.** The undersigned representatives for CCAEJ and Mill Man
2 each certify that he/she is fully authorized by the party whom he/she represents to
3 enter into the terms and conditions of this Consent Decree.

4 The SETTLING PARTIES hereby enter into this Consent Decree, Order and
5 Final Judgment and submit it to the Court for its approval and entry as a final
6 judgment,
7

8 MILL MAN STEEL, INC.	CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE
9 By: _____	By: _____
10 Name: <u>Christine D. Clary</u> _____	Name: <u>Penny Newman</u> _____
11 Title: <u>President</u> _____	Title: <u>Executive Director</u> _____
12 Date: _____	Date: _____
13 APPROVED AS TO FORM:	
14 For: Defendant LOEB & LOEB LLP	For: Plaintiff LOZEAU DRURY LLP
15 By: _____	By: _____
16 Name: <u>Albert M. Cohen</u> _____	Name: <u>Douglas J. Chermak, Esq.</u> _____
17 Date: _____	Date: _____

18 **IT IS SO ORDERED.**

19 Date: November 7, 2017

20 
21 Honorable Jesus G. Hernandez
22 United States District Court Judge
23 Central District of California