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**FILED**  
 SEP 15 2015  
 CLERK U.S. DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 BY [Signature] DEPUTY CLERK

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
 12 SACRAMENTO DIVISION

14 **CALIFORNIA DEPARTMENT OF TOXIC  
 SUBSTANCES CONTROL and the TOXIC  
 SUBSTANCES CONTROL ACCOUNT,**

16 Plaintiffs,

17 v.

18 **JIM DOBBAS, INC., a California  
 19 corporation; CONTINENTAL RAIL, INC.,  
 a Delaware corporation; DAVID VAN  
 20 OVER, individually; PACIFIC WOOD  
 PRESERVING, a dissolved California  
 21 corporation; WEST COAST WOOD  
 PRESERVING, LLC., a Nevada limited  
 22 liability company; and COLLINS &  
 AIKMAN PRODUCTS, LLC, a Delaware  
 23 limited liability company,**

24 Defendants.

25 **AND RELATED COUNTERCLAIMS AND  
 26 CROSS CLAIMS**

2:14-cv-00595-WBS-EFB

~~PROPOSED~~ **CONSENT DECREE  
 BETWEEN PLAINTIFFS AND  
 DEFENDANT WEST COAST WOOD  
 PRESERVING, LLC**

**Judge: Hon. William B. Shubb**

**Action Filed: March 3, 2014**  
 Courtroom 5, 14<sup>th</sup> Floor, 501 I Street,  
 Sacramento, CA 95814  
 Trial: January 4, 2017

**INTRODUCTION**

1  
2 1. Plaintiffs, the State of California Department of Toxic Substances Control and the  
3 Toxic Substances Control Account (collectively, “DTSC”), filed a Complaint in the above-  
4 captioned matter on March 3, 2014, pursuant to the Comprehensive Environmental Response,  
5 Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. (“CERCLA”), against several  
6 defendants, including Defendant West Coast Wood Preserving, LLC (“WCWP”), and then  
7 subsequently filed a First Amended Complaint on December 11, 2014 (“First Amended  
8 Complaint”), pursuant to CERCLA, amending to add an additional defendant. In this action,  
9 DTSC seeks to recover response costs incurred or to be incurred by DTSC in responding to  
10 releases and/or threatened releases at the property located at 147 A Street, Elmira, Solano County,  
11 CA, identified by Solano County Assessor’s Parcel Numbers 142-010-130, 142-010-140 and 142-  
12 042-010 (“the Site”), pursuant to CERCLA section 107(a), 42 U.S.C. § 9607(a). DTSC also  
13 seeks declaratory relief under 28 U.S.C. § 2201 and CERCLA section 113(g)(2), 42 U.S.C. §  
14 9613(g)(2), alleging that defendants are jointly and severally liable for future response costs to be  
15 incurred by DTSC with respect to the Site.

16 2. In the First Amended Complaint, DTSC alleges, in relevant part, that:

17 a. From approximately 1972 to 1982, certain defendants conducted wood  
18 preserving operations at the Site. Wood preserving operations involved the use of hazardous  
19 substances, including arsenic, chromium, and copper.

20 b. As a result of the wood preserving operations at the Site, hazardous substances  
21 have been, and continue to be, released and/or threatened to be released into the environment at  
22 and from the Site.

23 c. Pacific Wood Preserving (“PWP”) conducted wood preserving operations at the  
24 Site from approximately 1972 to approximately September 12, 1979, and owned the Site from  
25 1972 to approximately September 12, 1979. On September 12, 1979, PWP sold the Site to The  
26 Wickes Corporation. WCWP is a successor to PWP. From 1979 to approximately 1982, non-  
27 party to this agreement Collins & Aikman Products, LLC (formerly known as Collins & Aikman  
28 Products Co., and the successor by merger to The Wickes Corporation) (“C&A Products”),

1 conducted wood preserving operations at the Site. Wood preserving operations at the Site ceased  
2 in approximately 1982.

3 d. From the 1980's through 2005, The Wickes Corporation and its successor,  
4 C&A Products, took various response actions under the oversight of DTSC to address  
5 environmental contamination at, around, and/or beneath the Site. Those actions included, among  
6 other things, soil excavation, installing an asphalt cap over contaminated soils, constructing a  
7 building and a drainage system over another contaminated area of the Site, installing and  
8 operating a groundwater extraction and treatment system, and groundwater monitoring.

9 e. On or about March 20, 1997, C&A Products sold the Site to defendants Jim  
10 Dobbas, Inc. ("Dobbas") and Continental Rail, Inc. ("CRI").

11 f. On or about May 17, 2005, C&A Products filed a Chapter 11 bankruptcy  
12 petition in the United States Bankruptcy Court for the Eastern District of Michigan, Case No. 05-  
13 55932. In November 2005, while in Chapter 11 bankruptcy proceedings, C&A Products  
14 informed DTSC that it was unwilling to continue to perform response actions at the Site.

15 g. In 2006, DTSC requested that Dobbas and CRI, the then-owners and operators  
16 of the Site, carry out response actions to address contamination at the Site. Dobbas and CRI  
17 refused. As a result, DTSC issued an Imminent and Substantial Endangerment Determination on  
18 November 9, 2006, and entered into state-funded contracts to evaluate response actions.

19 h. DTSC tried in 2007 and 2008 to resume operating the Wickes/C&A Products  
20 remedy that DTSC had approved in 1996. But the groundwater treatment system had already  
21 reached a point at which it was evident that it would not clean up the groundwater to remediation  
22 goals in a timely manner. Ultimately, the idled groundwater treatment system would require too  
23 many repairs to make it cost-effective to restart. But until DTSC discovered the system could not  
24 be fixed, DTSC viewed re-starting it as an interim measure to contain the "plume" (i.e.  
25 underground area of groundwater contamination) until alternative cleanup approaches could be  
26 evaluated, which it eventually did.

27 i. In July 2010, DTSC finalized a Removal Action Workplan for the Site that  
28 called for contaminated soil excavation, off-site disposal, backfilling, confirmation sampling,

1 demolition of the groundwater extraction and treatment system, and long-term groundwater  
2 monitoring. In the Removal Action Workplan it was reported that contaminated groundwater had  
3 migrated from beneath the Site to the residential area, which created the potential for irrigation  
4 wells located there to extract and distribute contaminated groundwater.

5 j. On or about February 11, 2011, Dobbas and CRI sold the Site to defendant  
6 David Van Over (“Van Over”).

7 k. On March 16, 2011, DTSC issued an Imminent and Substantial Endangerment  
8 Determination Order and Remedial Action Order (“I/SE Order”) ordering Dobbas, CRI, and Van  
9 Over to conduct the actions described in the Removal Action Workplan and to take additional  
10 response actions at the Site. Dobbas, CRI, and Van Over failed to complete the actions described  
11 in the Removal Action Workplan, or to take other response actions described in the I/SE Order.

12 3. From 2005 to the present, DTSC took response actions to address the abandonment of  
13 environmental work at the Site. That abandonment created an imminent risk that contaminated  
14 groundwater would spread to nearby wells and further contaminate the drinking water aquifer,  
15 and that the asphalt cap would fail and allow direct human contact with contaminated soil or  
16 contribute more to surface water or groundwater contamination. DTSC’s response actions were  
17 necessary to remove the hazardous substances released and/or threatened to be released at and  
18 from the Site. The response actions included, but were not limited to, the following activities:  
19 efforts to repair and restart the groundwater extraction and treatment system, completion of a  
20 removal investigation for site soils, preparation of the Removal Action Workplan, implementation  
21 of the Removal Action Workplan, and groundwater monitoring.

22 4. As of December 31, 2014, DTSC’s unreimbursed response costs related to the Site  
23 exceeded \$2.4 million, exclusive of interest. DTSC will continue to incur response costs related  
24 to the Site, including costs to litigate the First Amended Complaint.

25 5. DTSC contends that WCWP is a responsible party pursuant to section 107(a) of  
26 CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable under CERCLA for response  
27 costs incurred and to be incurred by DTSC at the Site.

28 ///



1 11. WCWP waives all objections and defenses that it may have to the jurisdiction of the  
2 Court or to venue in this district in the above-captioned action. WCWP agrees not to challenge  
3 this Court's jurisdiction to enter and enforce this Consent Decree.

4 12. The Court shall retain jurisdiction over this matter for the purpose of interpreting and  
5 enforcing the terms of this Consent Decree, if necessary.

6 **II. SETTLEMENT OF DISPUTED CLAIMS.**

7 13. This Consent Decree resolves DTSC's claims against WCWP in the above-captioned  
8 action under section 107 of CERCLA, 42 U.S.C. § 9607. DTSC agrees to settlement of WCWP's  
9 liability in this action in exchange for consideration from WCWP, including payment by WCWP  
10 to reimburse a portion of the response costs incurred and to be incurred by DTSC at or in  
11 connection with releases and/or threatened releases of hazardous substances at, beneath, and/or  
12 from the Site.

13 14. Except as otherwise expressly provided in this Consent Decree, this Consent Decree  
14 shall not prejudice, waive, or impair any right, remedy or defense that WCWP may have in any  
15 other or further legal proceeding.

16 15. The Parties consent to, and shall not challenge entry of, this Consent Decree or this  
17 Court's jurisdiction to enter and enforce this Consent Decree.

18 16. Upon approval and entry of this Consent Decree by the Court, this Consent Decree  
19 shall constitute a final judgment between the Parties.

20 **III. DEFINITIONS.**

21 17. Unless otherwise expressly provided herein, terms used in this Consent Decree that  
22 are defined in CERCLA or in the regulations promulgated under CERCLA shall have the  
23 meaning assigned to them therein. Whenever terms listed below are used in this Consent Decree,  
24 the definitions below shall apply.

25 18. "DTSC" shall mean, collectively, the State of California Department of Toxic  
26 Substances Control ("the Department") and the Toxic Substances Control Account, and their  
27 predecessors and successors. The Department is a public agency of the State of California  
28 organized and existing under and pursuant to California Health and Safety Code § 58000, et seq.

1 Under California law, the Department is the state agency responsible for determining whether  
2 there has been a release and/or threatened release of hazardous substances into the environment,  
3 and for determining the actions to be taken in response thereto. The Toxic Substances Control  
4 Account is an account within the State of California General Fund. Under California Health and  
5 Safety Code section 24361(a), the account shall be a party in any action for recovery of response  
6 costs or expenditures incurred from the account under Chapter 6.8 of Division 20 of the  
7 California Health and Safety Code.

8 19. "Effective Date" shall mean the date of entry of this Consent Decree by this Court.

9 20. "Parties" shall mean DTSC and WCWP, collectively.

10 21. "Response Costs" shall mean all costs of "removal," "remedial action," or "response"  
11 as those terms are defined by CERCLA section 101, 42 U.S.C. § 9601, subsections 23-25, related  
12 to the release and/or threatened release of hazardous substances at or from the Site, including the  
13 soils and groundwater.

14 22. "Site" shall mean the property at 147 A Street, Elmira, Solano County, CA, identified  
15 by Solano County Assessor's Parcel Number(s) 142-010-130, 142-010-140 and 142-042-010.  
16 For purposes of this Consent Decree, the Site includes the vertical and areal extent of the  
17 hazardous substance contamination that is or has been present at, beneath, and/or from the Site.

#### 18 **IV. WCWP'S SETTLEMENT OBLIGATIONS.**

19 23. WCWP shall pay to DTSC the sum of three hundred fifty thousand dollars  
20 (\$350,000) in three installment payments, as follows: the first payment of one hundred thousand  
21 dollars (\$100,000) is due within thirty (30) days of the Effective Date; the second installment of  
22 one hundred fifty thousand dollars (\$150,000) is due within twelve (12) months of the Effective  
23 Date; and the third installment of one hundred thousand dollars (\$100,000) is due within twenty  
24 four (24) months of the Effective Date. However, if WCWP sells its business known as Pacific  
25 Wood Preserving of Bakersfield ("PWP Bakersfield"), located at 5601 District Boulevard,  
26 Bakersfield, California, and/or the assets of PWP Bakersfield after the Effective Date, WCWP  
27 shall pay all amounts still owing to DTSC pursuant to this paragraph within sixty (60) days of the  
28 completion of that sale or twenty-four months after the Effective Date, whichever date is earlier.

1 WCWP shall notify DTSC of the completion of the sale within three (3) business days of the  
2 sale's completion.

3 24. The payments required in paragraph 23 shall be made by certified check, cashier's  
4 check, or money order made payable to "Cashier, California Department of Toxic Substances  
5 Control," and each shall bear on its face both the docket number of this action, and the phrase  
6 "Site Code 100164." The payments shall be sent to:

7 Cashier  
8 Department of Toxic Substances Control  
9 Accounting Office, MS-21A  
10 1001 I Street  
11 P.O. Box 806  
12 Sacramento, CA 95812-0806

11 A copy of each check shall be mailed to:

12 Office of Legal Counsel  
13 California Department of Toxic Substances Control  
14 1001 I Street, 23rd Floor  
15 P.O. Box 806  
16 Sacramento, CA 95812-0806

16 Or e-mailed to Marilee.Hanson@dtsc.ca.gov in .pdf or .jpg format.

17 **V. ACCESS TO INFORMATION.**

18 25. Within thirty (30) calendar days of the Effective Date, WCWP shall provide to DTSC  
19 copies of any and all records, documents, and information within its possession or control, or that  
20 of its agents, relating to: (a) the ownership, operation, or control of the Site; (b) the purchase,  
21 storage, use, handling, generation, treatment, transportation, or disposal of hazardous substances  
22 in connection with the Site; (c) releases and/or threatened releases of hazardous substances at or  
23 from the Site, including the Site's soil and groundwater; and (d) response actions conducted by  
24 any person at the Site, to the extent such non-privileged records, documents, and information  
25 within its possession or control has not already been provided in disclosure or discovery in this  
26 action.

27 26. If, after the Effective Date, WCWP discovers or obtains any records, documents or  
28 information described in paragraph 25 not previously provided to DTSC, WCWP agrees to



1 provide DTSC with copies of the additional records, documents, or information within ten (10)  
2 calendar days of the date WCWP discovers or obtains the records, documents, or information.

3 27. WCWP may assert confidentiality claims covering part or all of the documents or  
4 information submitted to DTSC under this Consent Decree to the extent permitted by, and in  
5 accordance with, California Health and Safety Code section 25358.2. Documents or information  
6 determined to be confidential by DTSC will be afforded the protection specified in California  
7 Health and Safety Code section 25358.2. WCWP may also assert that certain documents,  
8 records, and other information are privileged under the attorney-client privilege or any other  
9 privilege recognized by federal law. If WCWP asserts such a privilege in lieu of providing  
10 documents, WCWP shall provide DTSC with a description of the documents withheld and the  
11 basis for asserting the privilege.

12 **VI. COVENANT NOT TO SUE BY DTSC.**

13 28. Except as expressly provided in Section VII (Reservation of Rights) of this Consent  
14 Decree, DTSC covenants not to sue WCWP pursuant to CERCLA, the California Hazardous  
15 Substances Account Act (“HSAA”), California Health and Safety Code § 25300, et seq., to: (a)  
16 recover DTSC’s Response Costs related to the Site; or (b) require WCWP to conduct response  
17 actions, including investigation, removal or remedial actions, in response to the release or  
18 threatened release of hazardous substances at the Site, including into the soils and groundwater.  
19 This Covenant Not to Sue is conditioned upon the complete and satisfactory performance by  
20 WCWP of all of its obligations under this Consent Decree. This Covenant Not to Sue shall be  
21 revoked and deemed not effective if WCWP fails to make any of the payments required by  
22 paragraph 23 of this Consent Decree.

23 **VII. RESERVATION OF RIGHTS.**

24 29. Claims Regarding Other Matters. DTSC reserves, and this Consent Decree is without  
25 prejudice to, all rights against WCWP with respect to all matters not expressly included within  
26 DTSC’s Covenant Not to Sue (Section VI).

27 30. Reservation of Claims. DTSC reserves, and this Consent Decree is without prejudice  
28 to, all rights against WCWP with respect to:

1 a. Claims based on a failure of WCWP to meet a requirement of this Consent  
2 Decree;

3 b. Liability arising from past, present, or future disposal, release, and/or threat of  
4 release of a hazardous substance, pollutant, or contaminant outside of the Site; and

5 c. Criminal liability.

6 31. Unknown Conditions/New Information. Notwithstanding any other provision in the  
7 Consent Decree, DTSC reserves, and this Consent Decree is without prejudice to, its right to  
8 institute proceedings in this action or in a new action, and/or to issue an administrative order  
9 seeking to compel WCWP to perform response activities at the Site and/or to pay DTSC for  
10 additional Response Costs, if:

11 a. Either of the following occurs: (i) conditions at the Site previously unknown to  
12 DTSC are discovered, or (ii) information previously unknown to DTSC is received in whole or in  
13 part; and

14 b. DTSC determines that the previously unknown conditions or new information,  
15 together with other relevant information, indicate that the response actions at the Site are not  
16 sufficiently protective of human health or the environment.

17 32. Reservation of Rights. Except as expressly provided in this Consent Decree, WCWP  
18 reserves its rights to oppose any claim brought by DTSC against WCWP pursuant to paragraphs  
19 30 and 31 of this Consent Decree. WCWP reserves the right to bring a claim against DTSC for  
20 failure to meet the requirements of this Consent Decree.

21 33. Claims against Other Persons. DTSC reserves, and this Consent Decree is without  
22 prejudice to, all rights, claims, and causes of action DTSC may have against any person other  
23 than WCWP. Nothing in this Consent Decree is intended to be, nor shall be construed as, a  
24 release, covenant not to sue, or compromise of any claim or cause of action which DTSC may  
25 have against any person or other entity not a signatory to this Consent Decree.

26 34. Government Authority. Except as expressly provided in this Consent Decree, nothing  
27 in this Consent Decree is intended, or shall be construed, to preclude DTSC from exercising its  
28 authority under any law, statute, or regulation with respect to the Site. Furthermore, except as

1 expressly provided in this Consent Decree, nothing in this Consent Decree is intended, nor shall  
2 be construed, to preclude any state agency, department, board, or entity, or any federal or local  
3 agency, department, board, or entity, from exercising its authority under any law, statute, or  
4 regulation.

5 **VIII. COVENANT NOT TO SUE BY WCWP.**

6 35. WCWP covenants not to sue and agrees not to assert any claims or causes of action  
7 against DTSC or its contractors or employees arising out of the transaction or occurrence that is  
8 the subject matter of the First Amended Complaint, or for any injuries, losses, costs, or damages  
9 caused or incurred as a result of the performances or requirements of this Consent Decree or  
10 DTSC's response actions at the Site. This Covenant not to sue is without prejudice to WCWP's  
11 reservation of rights as noted in Paragraph 32 herein.

12 **IX. CONTRIBUTION PROTECTION.**

13 36. With regard to claims for contribution against WCWP, WCWP is entitled to  
14 contribution protection pursuant to section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and by  
15 state statutory and common law for the "Matters Addressed" in this Consent Decree, except for  
16 actions and claims identified in DTSC's Reservation of Rights (Section VII).

17 37. The "Matters Addressed" in this Consent Decree include: (a) all past and future  
18 Response Costs incurred by or on behalf of DTSC with respect to the Site, including DTSC's  
19 oversight costs; and (b) all past and future Response Costs that have been and/or may be incurred  
20 by or on behalf of any other person, including any past, present, or future Site owner or operator,  
21 with respect to the Site.

22 38. The contribution protection provided in this Section is conditioned upon WCWP's  
23 full performance of its obligations under this Consent Decree.

24 39. Nothing in this Consent Decree limits or impairs the right of DTSC to pursue any  
25 other person for unrecovered Response Costs incurred by DTSC.

26 **X. NOTIFICATION.**

27 40. Notification to or communication among the Parties as required by or provided for  
28 in this Consent Decree shall be addressed as follows:

1 For DTSC:

2 Charlie Ridenour, Branch Chief  
3 Brownsfield and Environmental Restoration Program  
4 California Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, CA 95826

5 Marilee Hanson, Senior Staff Counsel  
6 Office of Chief Counsel  
7 California Department of Toxic Substances Control  
1001 I Street  
P.O. Box 806  
8 Sacramento, CA 95812-0806

9 For WCWP:

10 Lester Brown  
11 Perkins Coie LLP  
1888 Century Park East, Suite 1700  
Los Angeles, CA 90067

## 12 XI. GENERAL PROVISIONS.

13 41. **Parties Bound.** This Consent Decree shall apply to, be binding upon, and inure to  
14 the benefit of the Parties and their representatives, successors, heirs, legatees, and assigns.

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

19 43. **Costs.** Except as provided in this Consent Decree, the Parties will not seek to  
20 recover attorneys' fees and/or litigation costs against each other.

21 44. **Modification.** This Consent Decree may be modified upon written approval of the  
22 Parties and with the consent of the Court.

23 45. **Integration.** This Consent Decree constitutes the final, complete, and entire  
24 agreement between the Parties with respect to the settlement embodied in this Consent Decree.

25 46. **Lodging and Public Comment.** This Consent Decree shall be lodged with the Court  
26 for a period of not less than thirty (30) days for public notice and comment. DTSC shall file with  
27 the Court any written comments received and DTSC's responses thereto. DTSC reserves the  
28 right to withdraw or withhold its consent to entry of the Consent Decree if comments regarding

1 the Consent Decree disclose facts or considerations that indicate that this Consent Decree is  
2 inappropriate, improper, or inadequate. WCWP consents to the entry of this Consent Decree  
3 without further notice.

4 47. If the Court should decline to approve this Consent Decree in the form presented, this  
5 agreement is voidable at the discretion of either of the Parties, and the terms of the agreement  
6 may not be used as evidence in any litigation between the Parties.

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

10 49. **Signatories.** Each signatory to this Consent Decree certifies that he or she is fully  
11 authorized by the party he or she represents to enter into the terms and conditions of this Consent  
12 Decree, to execute it on behalf of the party represented, and to legally bind that party to all the  
13 terms and conditions of this Consent Decree.

14 **XII. APPROVALS OF PARTIES.**

15 DTSC consents to this Consent Decree by its duly authorized representative as follows:

16 **FOR THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL and TOXIC**  
17 **SUBSTANCES CONTROL ACCOUNT**

18 Date: 6/2/2015 Charlie Ridenour  
19 Charlie Ridenour, Branch Chief  
20 Brownfields and Environmental Restoration  
21 Program

22 WCWP consents to this Consent Decree by its duly authorized representative as follows:

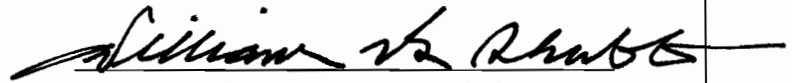
23 **FOR WEST COAST WOOD PRESERVING, LLC:**

24 Date: 5-28-15 Elaina Jackson  
25 Elaina Jackson  
26 President, and Chief Executive Officer,  
27 West Coast Wood Preserving, Inc.  
28 LLC

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**IT IS SO ORDERED, ADJUDGED, AND DECREED.**

Dated: 9/15/2015



The Honorable R. William B. Shubb  
United States District Court Judge