

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE CENTRAL DISTRICT OF CALIFORNIA

3    UNITED STATES OF AMERICA, )

4                                    Plaintiff, )

5                                    v. )

6    ALL METALS PROCESSING )  
7    COMPANY; ESTATE OF HELEN )  
8    L. POWERS; BARBARA C. )  
9    HARKER, personal representative )  
10   of the ESTATE OF HELEN L. )  
11   POWERS )

12                                    and )

13    264 W. SPAZIER AVENUE, )  
14    a parcel containing 9,919 square )  
15    feet of land located in Burbank, )  
16    Los Angeles County, California )

17                                    Defendants. )  
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CIVIL ACTION NO: 09-06363 JFW  
JUDGE: JOHN F. WALTER

1 CERCLA CONSENT DECREE FOR RECOVERY OF PAST COSTS AT  
2 264 W. SPAZIER AVENUE, BURBANK, CALIFORNIA

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**CONSENT DECREE**

**I. BACKGROUND**

1  
2 A. On September 1, 2009, the United States of America (“United States”),  
3 on behalf of the Administrator of the United States Environmental Protection  
4 Agency (“EPA”), filed a complaint in this matter pursuant to Section 107(a) and  
5 107(l) of the Comprehensive Environmental Response, Compensation, and  
6 Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking  
7 reimbursement of response costs incurred for response actions taken in connection  
8 with the release or threatened release of hazardous substances at 264 W. Spazier  
9 Avenue in Burbank, Los Angeles County, California.

10 B. The Defendants, Estate of Helen L. Powers and Barbara C. Harker,  
11 personal representative of the Estate of Helen L. Powers, who have entered into  
12 this Consent Decree (hereinafter “Settling Defendants”) do not admit any liability  
13 to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

14 C. In June 2007, EPA responded to the release or threatened release of  
15 hazardous substances at 264 W. Spazier Avenue, Burbank, California. In addition,  
16 on November 20, 2007, Settling Defendants received a CERCLA General Notice  
17 Letter from EPA that the Site is also part of the San Fernando Valley Area 2  
18 Superfund Site, Glendale Chromium Operable Unit. Between June and December  
19 2007, EPA conducted a removal action at the site to address contamination in the  
20 building on the property and hazardous substances that had contaminated the soil  
21 beneath and adjacent to the building. EPA’s past and future response costs at the  
22 property exceed \$2.2 million.

23 D. In approximately 1978, Helen L. Powers acquired ownership of 264 W.  
24 Spazier Avenue, Burbank, California. In April 2006, Helen L. Powers died. In  
25 November 2006, Defendant Barbara C. Harker was appointed personal  
26 representative of the Estate of Helen L. Powers. On May 28, 2009, Barbara C.  
27 Harker filed a petition to abandon the insolvent estate of Helen L. Powers in  
28

1 Orange County, California Superior Court (Case No. A239599). On September 1,  
2 2009, the United States objected to the petition to dissolve the Estate.

3 E. The United States has reviewed the Financial Information submitted by  
4 Settling Defendants to determine whether the Estate is financially able to pay  
5 response costs incurred and to be incurred at the Site. Based upon this Financial  
6 Information, the United States has determined that the Estate is able to pay the  
7 amounts specified in Section V.

8 F. The United States and Settling Defendants agree, and this Court by  
9 entering this Consent Decree finds, that this Consent Decree has been negotiated  
10 by the Parties in good faith, that settlement of this matter will avoid prolonged and  
11 complicated litigation between the Parties, and that this Consent Decree is fair,  
12 reasonable, and in the public interest.

13 THEREFORE, with the consent of the Parties to this Decree, it is  
14 ORDERED, ADJUDGED, AND DECREED:

## 15 **II. JURISDICTION**

16 1. This Court has jurisdiction over the subject matter of this action pursuant  
17 to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b) and  
18 also has personal jurisdiction over Settling Defendants. Settling Defendants  
19 consent to and shall not challenge entry of this Consent Decree or this Court's  
20 jurisdiction to enter and enforce this Consent Decree.

## 21 **III. PARTIES BOUND**

22 2. This Consent Decree is binding upon the United States and upon Settling  
23 Defendants and their heirs, successors, and assigns. Any change in ownership or  
24 corporate or other legal status, including, but not limited to, any transfer of assets  
25 or real or personal property, shall in no way alter the status or responsibilities of  
26 Settling Defendants under this Consent Decree.

#### IV. DEFINITIONS

1 3. Unless otherwise expressly provided herein, terms used in this Consent  
2 Decree which are defined in CERCLA or in regulations promulgated under  
3 CERCLA shall have the meaning assigned to them in CERCLA or in such  
4 regulations. Whenever terms listed below are used in this Consent Decree or in  
5 any appendix attached hereto, the following definitions shall apply:

6 a. "CERCLA" shall mean the Comprehensive Environmental  
7 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §  
8 9601, *et seq.*

9 b. "Consent Decree" shall mean this Consent Decree and all  
10 appendices attached hereto. In the event of conflict between this Consent Decree  
11 and any appendix, this Consent Decree shall control.

12 c. "Day" shall mean a calendar day. In computing any period of time  
13 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or  
14 federal holiday, the period shall run until the close of business of the next working  
15 day.

16 d. "DOJ" shall mean the United States Department of Justice and any  
17 successor departments, agencies, or instrumentalities of the United States.

18 e. "EPA" shall mean the United States Environmental Protection  
19 Agency and any successor departments, agencies or instrumentalities of the United  
20 States.

21 f. "Estate" shall mean the Estate of Helen L. Powers.

22 g. "Fair Market Value" shall mean the price at which the Property  
23 would change hands between a willing buyer and a willing seller under actual  
24 market conditions, neither being under any compulsion to buy or to sell and both  
25 having reasonable knowledge of relevant facts.

26 h. "Financial Information" shall mean those financial documents  
27 identified in Appendix B.

1 i. "Interest" shall mean interest at the rate specified for interest on  
2 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.  
3 § 9507, compounded annually on October 1 of each year, in accordance with 42  
4 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the  
5 time the interest accrues. The rate of interest is subject to change on October 1 of  
6 each year.

7 j. "Net Sales Proceeds" shall mean the total value of all consideration  
8 received by Settling Defendants for each Transfer less: i) attorney's fees of no  
9 more than \$10,000 to be paid to Settling Defendants' attorney, ii) closing costs,  
10 marketing costs, and broker fees limited to those reasonably incurred and actually  
11 paid by Settling Defendants associated with the Transfer of the Property, and iii)  
12 federal, state, and local taxes owed on the proceeds. Settling Defendants shall  
13 provide EPA with documentation sufficient to show the total value of all  
14 consideration received by Settling Defendants for each Transfer at the time of each  
15 Transfer, the amount of the proceeds of the Transfer, and the amounts  
16 corresponding to items i) through iii) above. The documentation shall also  
17 include, either as part of the report or separately, 1) a tax statement showing the  
18 assessed valuation of the Property for each of the three years immediately  
19 preceding the Transfer, and 2) a schedule showing all outstanding indebtedness on  
20 the Property.

21 k. "Paragraph" shall mean a portion of this Consent Decree identified  
22 by an Arabic numeral or an upper or lower case letter.

23 l. "Parties" shall mean the United States and the Settling Defendants.

24 m. "Plaintiff" shall mean the United States.

25 n. "Property" shall mean that portion of the Site that is currently  
26 owned by the Estate. The Property is located at 264 W. Spazier Avenue, Burbank,  
27 Los Angeles County, California, and is designated by the following property  
28

1 description: "a parcel containing 9,919 square feet of land located in Burbank, Los  
2 Angeles County, California."

3 o. "Section" shall mean a portion of this Consent Decree identified  
4 by a Roman numeral.

5 p. "Settling Defendants" shall mean the Estate of Helen L. Powers  
6 and Barbara C. Harker in her capacity as personal representative of the Estate.

7 q. "Site" shall mean the Superfund site, encompassing approximately  
8 9,919 square feet located at 264 W. Spazier Avenue, Burbank, Los Angeles  
9 County, California.

10 r. "United States" shall mean the United States of America, including  
11 its departments, agencies, and instrumentalities.

#### 12 **V. PAYMENT OF RESPONSE COSTS**

13 4. Within thirty (30) days of entry of this Consent Decree, Settling  
14 Defendants agree to act in good faith and to cooperate with EPA in the recovery  
15 of, and shall pay to the EPA Hazardous Substance Superfund, any and all proceeds  
16 recovered from an insurance policy covering the Site, or to which the Estate,  
17 Helen L. Powers, or the Helen L. Powers Trust is or has been an insured, issued by  
18 Maryland Casualty Company. Settling Defendants agree to act in good faith and  
19 cooperate with EPA in the recovery of insurance proceeds from any additional  
20 insurance policies covering the Site, or to which the Estate, Helen L. Powers, or  
21 the Helen L. Powers Trust is or has been an insured and shall pay to the EPA  
22 Hazardous Substance Superfund, any and all proceeds from these additional  
23 insurance policies. Any additional recovery of insurance proceeds by the Settling  
24 Defendants shall be paid to the EPA Hazardous Substance Superfund within thirty  
25 (30) days of receipt of the proceeds by the Settling Defendants. Payments under  
26 this Paragraph shall be made in accordance with the payment instructions in  
27 Paragraph 11(d).  
28

1 5. Settling Defendants shall also cause payment to be made to the EPA  
2 Hazardous Substance Superfund from proceeds of the sale of the Property, as  
3 provided herein.

4 6. Settling Defendants hereby assign and pledge to EPA eighty-five percent  
5 (85%) of the Net Sales Proceeds.

6 7. Within thirty (30) days after the Effective Date of this Agreement,  
7 Settling Defendants shall enter into a real estate listing agreement ("Listing  
8 Agreement") listing the Property for sale with an established, reputable, and  
9 licensed commercial real estate brokerage ("Listing Agent") that is experienced in  
10 commercial real estate transactions in Los Angeles County, California.

11 8. The Listing Agreement shall provide that the Settling Defendants may  
12 terminate the Listing Agreement with seven (7) days notice if EPA provides  
13 Settling Defendants notice that EPA has determined, in its sole, unreviewable  
14 discretion that the Listing Agent has failed to comply with any term of the Listing  
15 Agreement. Settling Defendants shall terminate the Listing Agreement within  
16 seven (7) days of receiving such notice from EPA. In the event that Settling  
17 Defendants' agreement with a Listing Agent is terminated prior to the sale of the  
18 Property and prior to the twelve (12) month period specified in Paragraph 13,  
19 Settling Defendants shall, within fourteen (14) days from the date of termination,  
20 enter into an agreement with a different Listing Agent, that also meets the  
21 qualifications set forth in the preceding paragraph.

22 9. Settling Defendants agree to use their best efforts accomplish the sale of  
23 the Property, taking all actions reasonably necessary to facilitate and expedite the  
24 sale of the Property in a commercially reasonable manner including, but not  
25 limited to, advertising the Property for sale on at least a monthly basis. Settling  
26 Defendants agree to take no action which would impair the value of the Property.

27 10. Settling Defendants agree to require the Listing Agent, through the  
28 Listing Agreement, to notify EPA in writing within forty-eight (48) hours of



1 receipt of any written offer to purchase the Property or a portion thereof and, at  
2 that time, to provide EPA with a copy of the offer. If EPA, in its sole,  
3 unreviewable discretion, approves of the offer in writing, then Settling Defendants  
4 shall accept the offer and enter into a purchase agreement. If a written offer  
5 includes a sales price for any portion of the Property at least 90% of the value  
6 indicated in the Appraisal (Appendix A), and the offer does not include any terms  
7 that are inconsistent with the terms or purpose of this Agreement, CERCLA, or  
8 other applicable federal or state law or which are otherwise unreasonable, EPA  
9 approval of the purchase agreement may be presumed and Settling Defendants  
10 may accept the offer and enter into a purchase agreement. Otherwise, Settling  
11 Defendants shall not execute a purchase agreement for the sale of any of the  
12 Property without prior written approval of the offer by EPA.

13 11. Within thirty (30) days after execution of an approved purchase  
14 agreement, the Settling Defendants shall cause to be prepared and submitted to  
15 EPA for approval appropriate escrow instructions as described below.

16 a. The escrow instructions shall provide for the proration of all  
17 closing costs and fees between purchaser and seller in a manner consistent with  
18 the custom in Los Angeles County, California for such transactions.

19 b. The escrow instructions shall provide that all normal expenses  
20 allocable to a seller at a closing of an escrow shall be deducted from the gross  
21 proceeds of the sale deemed otherwise receivable by the escrow agent. "Normal  
22 expenses" include commercially reasonable realtors' fees, reasonable costs of  
23 marketing, and any commercially reasonable costs of a public auction as well as  
24 survey costs, if required by a title company.

25 c. The escrow instructions shall provide that the escrow agent will  
26 allocate and distribute the Net Sales Proceeds within seven (7) days after the  
27 closing date of the sale: 85% to EPA and 15% to the Settling Defendants.

1 d. The escrow instructions shall provide that EPA's share will be  
2 paid by FedWire Electronic Funds Transfer ("EFT"). Payment shall be made by  
3 EFT in accordance with current EFT procedures to be provided to Settling  
4 Defendants by the Financial Litigation Unit of the U.S. Attorney's Office and shall  
5 be accompanied by a statement identifying the name and address of Settling  
6 Defendants, the Site name, EPA Region IX, and Site/Spill ID # 09 QP, and the  
7 civil action number for this case.

8 e. At the time of payment, Settling Defendants shall send notice that  
9 payment has been made to EPA and DOJ in accordance with Section XV (Notices  
10 and Submissions).

11 f. The amounts to be paid pursuant to this Section shall be deposited  
12 in the Glendale Chromium Operable Unit Special Account of the EPA Hazardous  
13 Substance Superfund to be retained and used to conduct or finance response  
14 actions at or in connection with the Site, or to be transferred by EPA to the EPA  
15 Hazardous Substance Superfund.

16 12. After the proposed escrow instructions are approved by EPA and  
17 agreed to by the Settling Defendants and a purchaser, Settling Defendants shall  
18 open an escrow account with an escrow agent approved by EPA, and Settling  
19 Defendants shall execute the sale according to the approved terms. The escrow  
20 account agreement shall include the escrow instructions approved by EPA.

21 13. If the entire Property has not been sold within twelve (12) months after  
22 the Effective Date of this Agreement, Settling Defendants shall immediately make  
23 all necessary arrangements to have all unsold portions of the Property sold by  
24 public auction, which shall be conducted within fourteen (14) months of the  
25 Effective Date of this Agreement by a disinterested party with no connection with  
26 Settling Defendants and who is licensed in the State of California to conduct such  
27 a public auction. There shall be no minimum bid required for each parcel of  
28 property sold by public auction. The Settling Defendants shall ensure that the

1 proceeds from such an auction are handled according to escrow instructions  
2 consistent with those above and approved by EPA.

3 14. EPA shall provide the Listing Agent with a letter describing what steps  
4 a purchaser must take to satisfy the reasonable steps requirement for a "bona fide  
5 prospective purchaser" under CERCLA § 101(40). Any such letter will be  
6 consistent with policy and guidance issued by EPA, including the "Policy on the  
7 Issuance of Comfort/Status Letters," 62 Fed. Reg. 2,624 (1997) and the "Interim  
8 Guidance Regarding Criteria Landowners Must Meet In Order to Qualify for Bona  
9 Fid Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner  
10 Limitations on CERCLA Liability," (March 2003). Any such letter will include  
11 limitations recommended by the applicable policies and guidance.

#### 12 **VI. TERMINATION OF THE ESTATE OF HELEN L. POWERS**

13 15. Settling Defendants agree that, within 10 (ten) days of the lodging of  
14 this Consent Decree, they will withdraw their Petition to Dissolve the Estate of  
15 Helen L. Powers currently pending in Orange County Superior Court. Settling  
16 Defendants further agree that they will not seek to terminate or dissolve the Estate  
17 of Helen L. Powers until the Property is sold and the the payments are made  
18 pursuant to Section V (Payment of Response Costs). Barbara C. Harker, the  
19 personal representative of the Estate, will not seek to terminate her responsibilities  
20 as personal representative of the Estate until after the Estate has fulfilled its  
21 responsibilities under this Agreement.

22 16. Settling Defendants agree to provide at least thirty (30) days notice to  
23 the parties listed in Section XV (Notices and Submissions) before seeking to  
24 terminate or dissolve the Estate.

#### 25 **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

26 17. Interest on Late Payments. If Settling Defendants fail to make any  
27 payment of amounts recovered under Section V by the required due date, Interest  
28 shall continue to accrue on the unpaid balance through the date of payment.

18. Stipulated Penalty.

1 a. If any amount of amounts recovered under Section V is not paid by  
2 the required date, Settling Defendants shall be in violation of this Consent Decree  
3 and shall pay, as a stipulated penalty, in addition to the Interest required by  
4 Paragraph 17, \$250 per violation per day that such payment is late.

5 b. Stipulated penalties are due and payable within thirty (30) days of  
6 the date of the demand for payment of the penalties by EPA. All payments to EPA  
7 under this Paragraph shall be identified as "stipulated penalties" and shall be made  
8 by certified or cashier's check made payable to "EPA Hazardous Substance  
9 Superfund." The check, or a letter accompanying the check, shall reference the  
10 name and address of the party making payment, the Site name, EPA Region IX  
11 and Site Spill ID Number QP-09, DOJ Case Number 90-1-3-09578, and the civil  
12 action number for this case, and shall be sent to:

13  
14 United States Environmental Protection Agency  
15 Superfund Payments  
16 Finance Center  
17 PO Box 979076  
18 St. Louis, MO 63197-9000  
19

20 c. At the time of each payment, Settling Defendants shall send notice  
21 that payment has been made to EPA and DOJ in accordance with Section XV  
22 (Notices and Submissions).

23 d. Penalties shall accrue as provided in this Paragraph regardless of  
24 whether EPA has notified Settling Defendants of the violation or made a demand  
25 for payment, but need only be paid upon demand. All penalties shall begin to  
26 accrue on the day after payment or performance is due and shall continue to accrue  
27

1 through the date of payment. Nothing herein shall prevent the simultaneous  
2 accrual of separate penalties for separate violations of this Consent Decree.

3 19. If the United States brings an action to enforce this Consent Decree,  
4 Settling Defendants shall reimburse the United States for all costs of such action,  
5 including but not limited to costs of attorney time.

6 20. Payments made under this Section shall be in addition to any other  
7 remedies or sanctions available to Plaintiff by virtue of Settling Defendants'  
8 failure to comply with the requirements of this Consent Decree.

9 21. Notwithstanding any other provision of this Section, the United States  
10 may, in its unreviewable discretion, waive payment of any portion of the stipulated  
11 penalties that have accrued pursuant to this Consent Decree. Payment of  
12 stipulated penalties shall not excuse Settling Defendants from payment as required  
13 by Section V or from performance of any other requirements of this Consent  
14 Decree.

#### 15 **VIII. RELEASE OF FEDERAL LIEN**

16 22. With respect to the sale of the Property or any parcel that is part of the  
17 Property, Settling Defendants may request from EPA, and EPA will tender to the  
18 escrow agent, a Draft Notice of Release of Federal Lien releasing, with respect to  
19 the Property or parcel, as applicable, the lien filed by EPA in the Recorder's Office  
20 of Los Angeles County, State of California on September 26, 2007. The Notice of  
21 Release of Federal Lien shall release the Federal Lien with respect to the Property  
22 or parcel, as applicable, and shall not release any other lien or encumbrance which  
23 may exist upon the Property. The United States shall record the Notice of Release  
24 of Federal Lien with Los Angeles County upon receipt of notice from the escrow  
25 agent that the escrow agent has received the full amount of the consideration of  
26 the sale of the Property.

#### 27 **IX. COVENANT NOT TO SUE BY PLAINTIFF**

1 23. Except as specifically provided in Section X (Reservation of Rights by  
2 United States), the United States covenants not to sue or to take administrative  
3 action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42  
4 U.S.C. § 9607(a), with regard to the Site. With respect to present and future  
5 liability, this covenant shall take effect upon receipt by EPA of all amounts  
6 required by Section V (Payment of Response Costs) and any amount due under  
7 Section VII (Failure to Comply with Consent Decree). This covenant not to sue is  
8 conditioned upon the satisfactory performance by Settling Defendants of their  
9 obligations under this Consent Decree. This covenant not to sue is also  
10 conditioned upon the veracity and completeness of the Financial Information  
11 provided to EPA by Settling Defendants. If the Financial Information is  
12 subsequently determined by EPA to be false or, in any material respect, inaccurate,  
13 Settling Defendants shall forfeit all payments made pursuant to this Consent  
14 Decree and this covenant not to sue and the contribution protection in Paragraph  
15 30 shall be null and void. Such forfeiture shall not constitute liquidated damages  
16 and shall not in any way foreclose the United States' right to pursue any other  
17 causes of action arising from Settling Defendants' false or materially inaccurate  
18 information. This covenant not to sue extends only to Settling Defendants and  
19 does not extend to any other person or corporation.

20 **X. RESERVATION OF RIGHTS BY UNITED STATES**

21 24. The United States reserves, and this Consent Decree is without  
22 prejudice to, all rights against Settling Defendants with respect to all matters not  
23 expressly included within the Covenant Not to Sue by United States in Paragraph  
24 23. Notwithstanding any other provision of this Consent Decree, the United States  
25 reserves all rights against Settling Defendants with respect to:

- 26 a. liability for failure of Settling Defendants to meet a requirement of  
27 this Consent Decree;
- 28 b. criminal liability;

1 c. liability for damages for injury to, destruction of, or loss of natural  
resources, and for the costs of any natural resource damage assessments;

2 d. liability, based upon Settling Defendants' transportation,  
3 treatment, storage, or disposal, or the arrangement for the transportation,  
4 treatment, storage, or disposal, of a hazardous substance or a solid waste at or in  
5 connection with the Site, after signature of this Consent Decree by Settling  
6 Defendants; and

7 e. liability arising from the past, present, or future disposal, release or  
8 threat of release of a hazardous substance, pollutant, or contaminant from outside  
9 of the Site.

10 25. Notwithstanding any other provision of this Consent Decree, EPA  
11 reserves, and this Consent Decree is without prejudice to, the right to re-institute  
12 or re-open this action, or to commence a new action seeking relief other than as  
13 provided in this Consent Decree, if the Financial Information provided by Settling  
14 Defendants, or the financial certification made by Settling Defendant in Paragraph  
15 36, is false or, in an material respect, inaccurate.

16 **XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

17 26. Settling Defendants covenant not to sue and agree not to assert any  
18 claims or causes of action against the United States, or its contractors or  
19 employees, with respect to the Site or this Consent Decree, including but not  
20 limited to:

21 a. any direct or indirect claim for reimbursement from the Hazardous  
22 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of  
23 CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other  
24 provision of law;

25 b. any claim arising out of response actions at or in connection with  
26 the Site, including any claim under the United States Constitution, the California  
27

1 Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act,  
2 28 U.S.C. § 2412, as amended, or at common law; or

3 c. any claim against the United States pursuant to Sections 107 and  
4 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

5 These covenants not to sue shall not apply in the event the United States  
6 brings a cause of action or issues an order pursuant to the reservations set forth in  
7 Paragraph 24 (a)-(e), but only to the extent that Settling Defendants' claims arise  
8 from the same response action or response costs that the United States is seeking  
9 pursuant to the applicable reservation.

10 27. Nothing in this Consent Decree shall be deemed to constitute approval  
11 or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42  
12 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

13 28. Settling Defendants agree not to assert any CERCLA claims or causes  
14 of action that it may have for all matters relating to the Site, including for  
15 contribution, against any other person. This waiver shall not apply with respect to  
16 any defense, claim, or cause of action that Settling Defendants may have against  
17 any person if such person asserts a claim or cause of action relating to the Site  
18 against Settling Defendants.

## 19 **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

20 29. Except as provided in Paragraph 28, nothing in this Consent Decree  
21 shall be construed to create any rights in, or grant any cause of action to, any  
22 person not a Party to this Consent Decree. The preceding sentence shall not be  
23 construed to waive or nullify any rights that any person not a signatory to this  
24 Decree may have under applicable law. Except as provided in Paragraph 28, the  
25 Parties expressly reserve any and all rights (including, but not limited to, any right  
26 to contribution), defenses, claims, demands, and causes of action which they may  
27 have with respect to any matter, transaction, or occurrence relating in any way to  
28 the Site against any person not a Party hereto.



1 30. The Parties agree, and by entering this Consent Decree this Court finds,  
2 that Settling Defendants are entitled, as of the date of entry of this Consent Decree,  
3 to protection from contribution actions or claims as provided by Section 113(f)(2)  
4 of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent  
5 Decree. The “matters addressed” in this Consent Decree are all response actions  
6 taken or to be taken and all response costs incurred or to be incurred, at or in  
7 connection with the Site, by the United States or any other person. The “matters  
8 addressed” in this Consent Decree do not include those response costs or response  
9 actions as to which the United States has reserved its rights under this Consent  
10 Decree (except for claims for failure to comply with this Decree), in the event that  
11 the United States asserts rights against Settling Defendants coming within the  
12 scope of such reservations.

13 31. Settling Defendants agree that, with respect to any suit or claim for  
14 contribution brought by it for matters related to this Consent Decree, it will notify  
15 EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such  
16 suit or claim. Settling Defendants also agree that, with respect to any suit or claim  
17 for contribution brought against it for matters related to this Consent Decree, it  
18 will notify EPA and DOJ in writing within ten (10) days of service of the  
19 complaint or claim upon it. In addition, Settling Defendants shall notify EPA and  
20 DOJ within ten (10) days of service or receipt of any Motion for Summary  
21 Judgment, and within ten (10) days of receipt of any order from a court setting a  
22 case for trial, for matters related to this Consent Decree.

23 32. In any subsequent administrative or judicial proceeding initiated by the  
24 United States for injunctive relief, recovery of response costs, or other relief  
25 relating to the Site, Settling Defendants shall not assert, and may not maintain, any  
26 defense or claim based upon the principles of waiver, *res judicata*, collateral  
27 estoppel, issue preclusion, claim-splitting, or other defenses based upon any  
28 contention that the claims raised by the United States in the subsequent proceeding

1 were or should have been brought in the instant case; provided, however, that  
2 nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by  
3 Plaintiff set forth in Section IX.

### 4 **XIII. ACCESS AND INSTITUTIONAL CONTROLS**

5 33. Settling Defendants shall:

6 a. commencing on the date of lodging of this Consent Decree,  
7 provide the United States and its representatives, including EPA and its  
8 contractors, with access at all reasonable times to the Site, or such other property,  
9 for the purpose of conducting any response activity related to the Site, including,  
10 but not limited to, the following activities:

- 11 1. Monitoring, investigation, removal, remedial or other  
12 activities at the Site;
- 13 2. Verifying any data or information submitted to the United;
- 14 3. Conducting investigations relating to contamination at or  
15 near the Site;
- 16 4. Obtaining samples;
- 17 5. Assessing the need for, planning, or implementing  
18 additional response actions at or near the Site;
- 19 6. Inspecting and copying records, operating logs, contracts, or  
20 other documents maintained or generated by Settling Defendants or their agents;
- 21 7. Assessing Settling Defendants' compliance with this  
22 Consent Decree; and
- 23 8. Determining whether the Site or other property is being used  
24 in a manner that is prohibited or restricted, or that may need to be prohibited or  
25 restricted, by or pursuant to this Consent Decree.

26 b. Commencing on the date of lodging of this Consent Decree,  
27 refrain from using the Site, or such other property, in any manner that would  
28

1 interfere with or adversely affect the implementation, integrity or protectiveness of  
2 the remedial measures to be performed at the Site;

3 c. Settling Defendants shall, within fifteen (15) Days after the entry  
4 of this Consent Decree, record a notice of the entry of this Consent Decree, with  
5 the Recorder's Office, Los Angeles County, State of California. Such notice shall  
6 provide that any person who subsequently acquires any interest in the Property or  
7 any portion thereof shall be subject to the provisions of Sections 101(40) and  
8 107(r) of CERCLA, 42 U.S.C. §§ 9601(40) and 9607(r). Thereafter and continuing  
9 until EPA issues a notice of completion for the final remedy for the Site, each  
10 deed, title, or other instrument conveying an interest in the Property shall contain a  
11 notice stating that the Property is subject to this Consent Decree and shall  
12 reference the location of this Consent Decree. Within ten (10) Days of recording  
13 the notice, the Settling Defendants shall provide to EPA a conformed copy of the  
14 recorded notice.

15 34. If EPA determines that land/water use restrictions in the form of state or  
16 local laws, regulations, ordinances or other governmental controls are needed to  
17 implement response activities at the Site, ensure the integrity and protectiveness  
18 thereof, or ensure non-interference therewith, Settling Defendants shall cooperate  
19 with EPA's efforts to secure such governmental controls.

20 35. Notwithstanding any provision of this Consent Decree, the United  
21 States retains all of its access authorities and rights, as well as all of its rights to  
22 require land/water use restrictions, including enforcement authorities related  
23 thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### 24 **XIV. CERTIFICATION**

25 36. Settling Defendants hereby certify that, to the best of their knowledge  
26 and belief, after thorough inquiry, they have:

27 a. not altered, mutilated, discarded, destroyed or otherwise disposed  
28 of any records, reports, or other information relating to Settling Defendants'

1 potential liability regarding the Site since notification of potential liability by the  
2 United States or the filing of suit against Settling Defendants regarding the Site,  
3 and that Settling Defendants have fully complied with any and all EPA requests  
4 for information regarding the Site and Settling Defendants' financial  
5 circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§  
6 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

7 b. submitted to EPA Financial Information that fairly, accurately, and  
8 materially sets forth the Estate's financial circumstances, and that those  
9 circumstances have not materially changed between the time the Financial  
10 Information was submitted to EPA and the time Settling Defendants execute this  
11 Consent Decree.

#### 12 **XV. NOTICES AND SUBMISSIONS**

13 37. Whenever, under the terms of this Consent Decree, notice is required to  
14 be given or a document is required to be sent by one party to another, it shall be  
15 directed to the individuals at the addresses specified below, unless those  
16 individuals or their successors give notice of a change to the other Parties in  
17 writing. Written notice as specified herein shall constitute complete satisfaction of  
18 any written notice requirement of the Consent Decree with respect to the United  
19 States, EPA, and Settling Defendants, respectively.

20 As to DOJ:

21 Chief, Environmental Enforcement Section  
22 Environment and Natural Resources Division  
23 U.S. Department of Justice (DJ # 90-11-3-09578)  
24 P.O. Box 7611  
25 Washington, D.C. 20044-7611  
26

27 Matthew Thurlow  
28

1 Environmental Enforcement Section  
2 Environment and Natural Resource Division  
3 U.S. Department of Justice  
4 P.O. Box 7611  
5 Washington, D.C. 20044-7611

6 As to EPA:

7 Larry Bradfish  
8 Office of Regional Counsel  
9 U.S. Environmental Protection Agency  
10 75 Hawthorne Street  
11 San Francisco, CA 94105  
12

13 As to Settling Defendants:

14 Stewart R. Albertson  
15 3750 Santa Fe Avenue, Suite 109  
16 Riverside, California 92507  
17

18 **XVI. RETENTION OF JURISDICTION**

19 38. This Court shall retain jurisdiction over this matter for the purpose of  
20 interpreting and enforcing the terms of this Consent Decree.

21 **XVII. INTEGRATION/APPENDICES**

22 39. This Consent Decree and its appendices constitute the final, complete,  
23 and exclusive Consent Decree and understanding between the Parties with respect  
24 to the settlement embodied in this Consent Decree. The Parties acknowledge that  
25 there are no representations, agreements, or understandings relating to the  
26 settlement other than those expressly contained in this Consent Decree. The  
27 following appendices are attached to and incorporated into this Consent Decree:  
28

1           “Appendix A” is an Appraisal of the Property;

2           “Appendix B” is an Inventory and Appraisal filed by Settling Defendant on  
3 May 12, 2008 in Orange County Superior Court.”

4           **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

5           40. This Consent Decree shall be lodged with the Court for a period of not  
6 less than thirty (30) days for public notice and comment. The United States  
7 reserves the right to withdraw or withhold its consent if the comments regarding  
8 the Consent Decree disclose facts or considerations which indicate that this  
9 Consent Decree is inappropriate, improper, or inadequate. Settling Defendants  
10 consent to the entry of this Consent Decree without further notice.

11           41. If for any reason this Court should decline to approve this Consent  
12 Decree in the form presented, this Consent Decree is voidable at the sole  
13 discretion of any party and the terms of the Consent Decree may not be used as  
14 evidence in any litigation between the Parties.

15           **XIX. SIGNATORIES/SERVICE**

16           42. Each undersigned representative of Settling Defendants to this Consent  
17 Decree and the Deputy Chief for the Environmental Enforcement Section of the  
18 United States Department of Justice certifies that he or she is authorized to enter  
19 into the terms and conditions of this Consent Decree and to execute and bind  
20 legally such Party to this document.

21           43. Settling Defendants hereby agree not to oppose entry of this Consent  
22 Decree by this Court or to challenge any provision of this Consent Decree, unless  
23 the United States has notified Settling Defendants in writing that it no longer  
24 supports entry of the Consent Decree.

25           44. Settling Defendants shall identify, on the attached signature page, the  
26 name and address of an agent who is authorized to accept service of process by  
27 mail on its behalf with respect to all matters arising under or relating to this  
28 Consent Decree. Settling Defendants hereby agree to accept service in that

1 manner and to waive the formal service requirements set forth in Rule 4 of the  
2 Federal Rules of Civil Procedure and any applicable local rules of this Court,  
3 including but not limited to, service of a summons. The Parties agree that Settling  
4 Defendants need not file an answer to the complaint in this action unless or until  
5 the Court expressly declines to enter this Consent Decree.

6 **XX. FINAL JUDGMENT**

7 45. Upon approval and entry of this Consent Decree by the Court, this  
8 Consent Decree shall constitute the final judgment between the United States and  
9 Settling Defendants. The Court finds that there is no just reason for delay and  
10 therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

11 SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2010.

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14 \_\_\_\_\_  
15 United States District Judge

16 JOHN F. WALTER  
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 All Metal Processing Company, et al., Case No. CV-09-6363-JWF, relating to the  
3 264 W. Spazier Superfund Site.  
4

5  
6 FOR THE UNITED STATES OF AMERICA  
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9

10  
11 Ellen Mahan  
12 Deputy Section Chief  
13 Environmental Enforcement Section  
14 Environment and Natural Resources Division  
15 U.S. Department of Justice  
16 P.O. Box 7611  
17 Washington, DC 20044-7611

18  
19 Matthew D. Thurlow  
20 Environmental Enforcement Section  
21 Environment and Natural Resources Division  
22 U.S. Department of Justice  
23 P.O. Box 7611  
24 Washington, DC 20044-7611  
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Keith Takata  
Superfund Division Director  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

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Larry Bradfish  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

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Barbara C. Harker  
On behalf of the Estate of Helen L. Powers  
3750 Santa Fe Road, Suite 109  
Riverside, CA 92507

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Barbara C. Harker  
In her capacity as Executrix of the Estate of Helen L. Powers  
3750 Santa Fe Road, Suite 109  
Riverside, CA 92507