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8 *Attorneys for Plaintiffs*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE

11)	CASE NO. 30-201400762137-CU-MC-
12	RBC FOUR CO. LLC., and WILLIAM)	CJC
13	DUNLAP, INDIVIDUALLY AND IN THE)	[Related to 30-2014-00745416-CU-TT-
14	PUBLIC INTEREST,)	CXC, 30-2014-00729353-CU-MC-CJC]
15	Plaintiffs,)	
16	vs.)	CONSENT TO JUDGMENT AS TO
17)	DEFENDANT HIXSON METAL
18	HIXSON METAL FINISHING)	FINISHING REGARDING
19	[Facility ID No. 11818])	PROPOSITION 65 CLAIMS
20	Defendant.)	Date: April 1, 2015
21)	Time:
22)	Dept.:
23)	Assigned to: Kim G. Dunning

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25
26 The Plaintiffs, RBC Four Co. LLC, ("RBC") and William Dunlap, on behalf of the State of California,
27 enter into this Consent to Judgment as a furtherance of resolving the current litigation of the private enforcer

CONSENT TO JUDGMENT

1 RBC and the defendant relative to its representative claims against defendant Hixson Metal Finishing (“Hixson
2 or HMF”), in that the defendant is alleged to have discharged Proposition 65 listed chemicals into sources of
3 drinking water in violation of California Health and Safety Code, (“CA H&S”) § 25249.5 .

4 BACKGROUND

5 RBC alleges that HMF operates a manufacturing facility in Newport Beach, CA that utilizes hexavalent
6 chromium or its compounds, including but not limited to chromic acid. Hexavalent chromium, (Cr VI) is listed
7 pursuant to Proposition 65 as a chemical known to the State of California to be a carcinogen and reproductive
8 toxicant. Carbon Monoxide is also a chemical (gas) identified in RBC’s Proposition 65 Notice. Cr VI and
9 Carbon Monoxide shall be referred to herein as the "Listed Chemicals."
10

11 I. Notice of Violation

12 On or about April 2, 2014, RBC served HMF and various public enforcement agencies with a
13 document entitled "60-Day Notice of Violation" (the "Notice") that provided HMF and those public enforcers
14 with notice, among other allegations, (i) alleging that HMF was in violation of California Health & Safety
15 Code §25249.6 for failing to warn persons adjacent to their facility in Newport Beach that Hixson was
16 releasing quantities of Chromium compounds, “Cr VI,” and carbon monoxide; and (ii) further alleging that
17 Hixson “contaminated sources of drinking water within the state in violation of Health & Safety Code
18 §25249.5 for specifically Cr VI”.
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22 The Notice alleges that “[t]he first violation addressed by this Notice began on or after April 4,
23 2013, and has occurred on numerous occasions each and every day since that date and are ongoing and
24 continuing failures to warn in conformity with CCR Tit. 27 §25601. The air exposures caused by these
25 emissions of specifically Chromium compounds, “CR VI” and carbon monoxide are violations of statute
26 and are a “continuing violations”...[t]here is a second allegation that [HMF] has contaminated sources of
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1 drinking water within the state in violation of H&S Code §25249.5 for specifically CR VI as they have
2 discharged onto land or into land where the chemical may pass into a source of drinking water.” To the
3 best of the Parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the
4 Notice relating to the alleged violations of Health & Safety Code §25249.5 or the non-hexavalent
5 chromium claims asserted by RBC. On or about September 17, 2014, the Attorney General of the State of
6 California filed a Complaint against HMF relating to alleged violations of Health & Safety Code §25249.6
7 with respect to hexavalent chromium and, to the best of Parties' knowledge, is diligently prosecuting those
8 claims (the “AG Action”). The Attorney General’s action, has mooted the alleged warning violations of
9 Hixson relating to CrVI. This Consent to Judgment does not purport to settle any claims alleged in the AG
10 Action, although it resolves all claims that were brought or could have been brought by RBC pursuant to
11 the Notice. RBC, concurrently with the filing of this Consent Judgment has amended its NOV to remove its
12 claims related to carbon monoxide and will seek approval of the Court to file an amended Complaint.
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15 On or about Dec 17, 2014 Plaintiffs filed a Complaint in the Superior Court of the State of
16 California for the County of Orange, alleging violations consistent with the claims in the Notice and any
17 ancillary claims. Hixson answered the Complaint by denying generally and specifically each and every
18 claim in the Complaint.
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20 II. No Admission

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22 This Consent to Judgment resolves claims that are denied and disputed by HMF. The parties enter
23 into this Consent to Judgment pursuant to a full and final settlement of any and all claims between the
24 Parties (including any other claims that could have been brought in this action, but excluding any claims
25 that are part of the Attorney General’s action) for the purpose of avoiding prolonged litigation. HMF
26 denies the each and every material factual and legal allegation contained in the RBC Notice and each and
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1 every allegation contained in the Complaint. HMF further maintains that all alleged emissions and/or
2 discharges or alleged releases in, around, and beyond Newport Beach, California, alleged to be attributable
3 to HMF, have been and are in compliance with all laws. Nothing in this Consent to Judgment shall be
4 construed as an admission by HMF of any fact, finding, issue of law, or violation of law, nor shall
5 compliance with this Consent to Judgment constitute or be construed as an admission by HMF of any fact,
6 finding, conclusion, issue of law, or violation of law, such being specifically denied by HMF. However,
7 notwithstanding the foregoing, this section shall not diminish or otherwise affect the obligations,
8 responsibilities and duties of HMF under this Consent to Judgment.

10 III. Effective Date, Approval Date

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12 For purposes of this Consent to Judgment, the term "Effective Date" shall mean the date which is ten
13 (10) days after the Approval Date. For purposes of this Consent to Judgment, the term "Approval Date"
14 shall mean the date the court approves this Consent Judgment.

15
16 IV. Prohibition On Discharges To Land that Could Pass Into A Source Of Drinking Water.

17 The Parties understand and acknowledge that Hixson is subject to a Corrective Action Consent
18 Agreement, dated as of September 9, 2002, with the California Department of Toxic Substances Control
19 ("Corrective Action Agreement"). The Corrective Action Agreement provides a comprehensive remedy
20 for the alleged discharges of "hazardous waste or hazardous waste constituents for the entire facility and
21 groundwater," including, without limitation chromic acid. Under the Corrective Action Agreement,
22 Hixson agreed and is bound to perform the work required thereunder "in accordance with the applicable
23 state and federal laws, their implementing regulations, and the applicable DTSC and the United States
24 Environmental Protection Agency guidance documents." Among other things, the Corrective Action
25 Agreement, requires Hixson (i) to implement interim measures "[i]f at any time [Hixson] identified an
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1 immediate or potential threat to human health and/or the environment, or discovers new releases of
2 hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not
3 previously identified;" (ii) complete a thorough facility investigation; (iii) prepare a corrective measures
4 study under certain specified conditions; and (iv) to implement appropriate corrective measures, under the
5 oversight of the California Department of Toxic Substances Control. A true and correct copy of the
6 Corrective Action Agreement is attached, hereto, as Exhibit A.
7

8 Hixson shall continue to comply with the terms of the Corrective Action Agreement until such time
9 as that agreement is concluded, pursuant to its terms.
10

11 Proposition 65 contains an exemption from the discharge provision, which provides "Section
12 25249.5 shall not apply to any discharge or release that meets both of the following criteria: (i) the
13 discharge or release will not cause any significant amount of the discharged or released chemical to enter
14 any source of drinking water; (ii) the discharge or release is in conformity with all other laws and with
15 every applicable regulation, permit, requirement, and order." Hixson has claimed that, because it is subject
16 to the Corrective Action Agreement, this exemption applies to the alleged discharges and/or releases at
17 issue in RBC's NOV. RBC disagrees. To avoid the fees, costs, expenses, and uncertainty associated with
18 litigating these issues the parties have agreed to resolve RBC's claims as set forth below.
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21 V. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)

22 a. Penalty Assessment
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24 Pursuant to Health & Safety Code §25249.7(b), HMF shall be assessed \$5,000.00 in civil penalties
25 for the alleged violations of the discharge to drinking water provision of Proposition 65, to be apportioned
26 in accordance with California Health & Safety Code §25249.12(c)(1), with 75% of these funds remitted to
27 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
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1 remaining 25% of these penalty monies remitted to RBC as provided by California Health & Safety Code
2 §25249.12(d). HMF shall issue two separate checks for the penalty payment: (a) one check made payable
3 to Kurt Bollin Law in Trust for the State of California's Office of Environmental Health Hazard
4 Assessment (OEHHA), representing 75% of the total penalty and (b) one check to Kurt Bollin Law for
5 RBC representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:
6 The first 1099 shall be issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010,
7 Sacramento, CA 95814 (EIN: 68-0284486), in the amount identified hereinabove. The second 1099 shall
8 be issued to RBC, in the amount identified hereinabove, whose address and tax identification number shall
9 be furnished, upon request, ten (10) calendar days before payment is due.
10

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12 VI. REIMBURSEMENT OF FEES AND COSTS
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14 The parties reached an accord on the compensation due to RBC and his counsel under the private
15 attorney general doctrine and principles of contract law. Under these legal principles, HMF shall reimburse
16 RBC counsel for fees and costs, incurred as a result of investigating, bringing this matter to Defendant's
17 attention, and negotiating a settlement in the public interest. Except as to any attorney fees and costs
18 expended pursuant to this agreement, HMF shall pay RBC and his counsel \$5,000.00 for all attorneys' fees,
19 expert and investigation fees, and related costs. The payment shall be made payable to Kurt Bollin Law and
20 shall be delivered on or before the Approval Date, at the following address:
21

22 Kurt Bollin Law
23 1506 Oak St.-D
24 South Pasadena, CA 91030
25

26 VI. RELEASE OF ALL CLAIMS
27

1 a. Release of Defendants

2 In further consideration of the promises and agreements herein contained, and for the payments to
3 be made pursuant to this agreement, and excepting any claim, agreement, penalty, fee or cost to be agreed
4 or assessed under this agreement, William Dunlap, in his representative capacity on behalf of the People,
5 and RBC, on behalf of itself, and each of their past and current agents, representatives, attorneys,
6 successors and/or assignees, and in the interest of the general public in its representative capacity on behalf
7 of the People, hereby waive all rights to institute or participate in, directly or indirectly, any form of legal
8 action against Hixson and releases all claims (whether known or unknown, suspected or unsuspected),
9 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
10 demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
11 investigation fees, expert fees and attorneys' fees), of any nature whatsoever. Notwithstanding the
12 generality of the foregoing, this release does not encompass any claims asserted by the State of California
13 in its related action for failure to warn (collectively "Released Claims"), against HMF and each of HMF's
14 owners, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors,
15 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively
16 "Releasees").
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20 RBC and William Dunlap expressly waive all rights they have or may have under Section 1542 of
21 the Civil Code of California and similar laws of any state or territory of the United States or other
22 jurisdictions. Section 1542 of the Civil Code of the California provides as follows:
23

24 Section 1542. General Release: Extent. A general release does not
25 extend to claims which the creditor does not know or suspect to exist in his
26 favor at the time of executing the release, which if known by him must have
27 materially affected his settlement with the debtor.
28

1 VII. HMF's Release of RBC
2

3 HMF waives any and all claims against RBC, his attorneys and other representatives, for any and all
4 actions taken or statements made (or those that could have been taken or made) by RBC and his attorneys
5 and other representatives, whether in the course of investigating claims or otherwise seeking enforcement
6 of Proposition 65 against Defendant in this matter, and/or with respect to the Newport Beach facility.
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8 VIII. ELECTION TO SECURE JUDGMENT UPON SETTLEMENT
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10 The Parties intend and agree that this Consent to Judgment shall be given full effect for purposes of
11 precluding claims against HMF or the Releasees either under Proposition 65 as alleged in the Notice
12 (except for those claims currently being prosecuted by the Attorney General's Office against Hixson under
13 Proposition 65) or any of the causes of action asserted in RBC's Complaint (or that could have been
14 asserted in the Complaint or otherwise), as covered under the terms of the release in Section 5.
15

16 IX. SEVERABILITY
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18 If, subsequent to the execution of this Consent to Judgment, any of the provisions of this Settlement
19 Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining
20 shall not be adversely affected.

21 X. COURT APPROVAL
22

23 This Consent to Judgment must be approved by the Court. The Consent to Judgment shall become
24 null and void if, for any reason, it is not approved and entered by the Court within six months after it has
25 been fully executed by the Parties. Notwithstanding the generality of the foregoing, those portions of this
26 settlement not pertaining to Proposition 65 shall remain in effect and the Parties shall cooperate in drafting
27 any documentation to effectuate that intention.
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1 XI. GOVERNING LAW

2 The terms of this Consent to Judgment shall be governed by the laws of the State of California and
3 apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered
4 inapplicable by reason of law generally, or as to the Newport Beach facility, then HMF shall provide
5 written notice to RBC of any asserted change in the law, and shall have no further obligations pursuant to
6 this Consent to Judgment with respect to, and to the extent that, the Newport facility is so affected.
7

8 XII. NOTICES

9
10 Unless specified herein, all correspondence and notices required to be provided pursuant to this
11 Consent to Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or
12 certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the
13 following addresses:

14 For HMF:

15
16 Mr. Douglas Greene
17 Hixson Metal Finishing
18 829 Production Place
19 Newport Beach, CA 92663

20 With a copy to:

21
22 Chris M. Amantea, Esq.
23 Squire Patton Boggs (US) LLP
24 555 So. Flower St., Suite 3100
25 Los Angeles, CA 90071

26
27 For RBC or DUNLAP:

1 Kurt Bollin Law
2 1506 Oak St.-D
3 South Pasadena, CA 91030
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5 Any party, from time to time, may specify in writing to the other party a change of address to which
6 all notices and other communications shall be sent.
7

8 XIII. COUNTERPARTS, FACSIMILE SIGNATURES

9 This Consent to Judgment may be executed in counterparts and by facsimile, each of which shall be
10 deemed an original, and all of which, when taken together, shall constitute one and the same document.
11

12 XIV. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

13 RBC has complied with the reporting form requirements referenced in Health & Safety Code §
14 25249.7(f) and will seek judicial approval in conformity with CCR 3000, (b) et seq.
15

16 XV. MODIFICATION

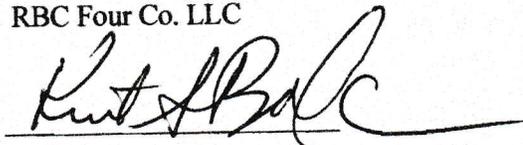
17 This Consent to Judgment may be modified only by a written agreement of the Parties, and
18 approved by the Court.
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20 XVI. AUTHORIZATION

21 The undersigned are authorized to execute this Consent to Judgment on behalf of their respective
22 Parties and have read, understood and agree to all of the terms and conditions of this Consent to Judgment.
23
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25 Date: *March 13, 2015*

26 Kurt S. Bollin, Esq. For
27 RBC Four Co. LLC

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-10-

CONSENT TO JUDGMENT

1 Kurt Bollin Law
2 1506 Oak St.-D
3 South Pasadena, CA 91030

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25 Date:

Kurt S. Bollin, Esq. For
RBC Four Co. LLC

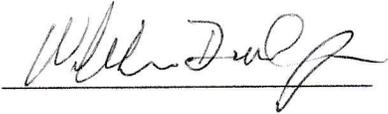
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CONSENT TO JUDGMENT

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Date: *MARCH 12, 2015*

William Dunlap, Individually



Date:

Douglas Greene For
Hixson Metal Finishing

CONSENT TO JUDGMENT