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13
14 IN THE UNITED STATES DISTRICT COURT
15
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 COOPER LIVING TRUST,
21 COOPER PROPERTIES, LP,

22 Defendants.

Civ. A. No. 2:17-cv-7836

23
24 **CONSENT DECREE**
25
26
27
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1 I. Background

2 A. The United States of America (“United States” or “Plaintiff”), on
3
4 behalf of the Administrator of the United States Environmental Protection Agency
5 (“EPA”), has concurrently filed a complaint in this matter pursuant to Sections 106
6
7 and 107 of the Comprehensive Environmental Response, Compensation, and
8 Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607 against Cooper Living Trust
9
10 and Cooper Properties, LP (“Settling Defendants”).

11 B. The United States in its complaint seeks, inter alia, payment of costs
12 incurred by EPA for response actions taken or to be taken in connection with the
13 release or threatened release of hazardous substances at and from the Cooper Drum
14 Company Superfund Site in South Gate, Los Angeles County, California (the
15 “Site”), and performance by defendants of certain further response actions at the
16
17 Site.
18

19 C. Settling Defendants do not admit any liability to Plaintiff arising out
20
21 of the transactions or occurrences alleged in the complaint, nor do they
22 acknowledge that the release or threatened release of hazardous substances at or
23
24 from the Site constitutes an imminent or substantial endangerment to the public
25 health or welfare or the environment.

26 D. A Unilateral Administrative Order No. 2009-07 (the “Order”) was
27
28 issued on February 11, 2009 to the Settling Defendants and other responsible

1 parties in order to implement the Record of Decision (“ROD”) for the Cooper
2 Drum Site. A group of responsible parties (the “performing parties”) conducted the
3 remedial action under the Order. A Consent Decree entered on April 20, 2016
4 terminated the Order as to the performing parties. The Settling Defendants were
5 not performing parties and have remained subject to the Order. The Order is being
6 terminated with regard to the Settling Defendants pursuant to Section XX of this
7 Consent Decree.
8
9
10

11 E. The Site occupies one of two parcels of land owned by Settling
12 Defendants. Settling Defendant Cooper Living Trust is the owner of the parcel
13 which includes the Site, known as Assessor’s Parcel No. 6222-005-032 in the
14 records of Los Angeles County, California (the “Trust Parcel”). Settling
15 Defendants Cooper Living Trust and Cooper Properties, LP are the owners of the
16 parcel adjacent to the Superfund Site, known as Assessor’s Parcel No. 6222-005-
17 031 in the records of Los Angeles County, California (the “Property”). The Lot
18 Lines of the Trust Parcel and the Property (collectively, “the Parcels”) were
19 adjusted in 2015 by City of South Gate, California Lot Line Adjustment No. 93.
20 The Trust Parcel, as so adjusted, contains the real property upon which the drum
21 reconditioning operations from which hazardous substances allegedly have been
22 released were formerly conducted and at which the remedial action for the Site is
23 being conducted. The Property, as so adjusted, is subject to a contract for sale and
24
25
26
27
28

1 an escrow has been opened to facilitate the sale. The purchaser of the Property
2 under the contract for sale is a party to a Prospective Purchaser Agreement
3 (“PPA”) with EPA
4

5 F. The Parties agree that Settling Defendants have a common interest in
6 and derive a common benefit from the undertakings and covenants of this Consent
7 Decree.
8

9 G. The Parties agree, and the Court by entering this Consent Decree
10 finds, that this Consent Decree has been negotiated by the Parties in good faith and
11 implementation of this Consent Decree will avoid prolonged and complicated
12 litigation between the Parties, and that this Consent Decree is fair, reasonable, and
13 in the public interest.
14
15

16 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:
17

18 II. Jurisdiction

19 1. This Court has jurisdiction over the subject matter of this action
20 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and
21 9613(b). This Court also has personal jurisdiction over the Settling Defendants.
22 Venue is proper in this District pursuant to 42 U.S.C § 9613(b) and 28 U.S.C.
23 § 1391(b) and (c). Solely for the purposes of this Consent Decree and the
24 underlying complaint, Settling Defendants waive all objections and defenses that
25 they may have to jurisdiction of the Court or to venue in this District. Settling
26
27
28

1 Defendants shall not challenge the terms of this Consent Decree or this Court's
2 jurisdiction to enter and enforce this Consent Decree.
3

4
5 **III. Parties Bound**

6
7 2. This Consent Decree applies to and is binding upon the United States
8 and upon Settling Defendants and their heirs, successors and assigns. Any change
9 in ownership or corporate/partnership status of Settling Defendants including, but
10 not limited to, any transfer of assets or real or personal property, shall in no way
11 alter Settling Defendants' responsibilities under this Consent Decree, except as
12 otherwise provided in this Consent Decree or approved in writing by EPA.
13

14
15 **IV. Definitions**

16
17 3. Unless otherwise expressly provided herein, terms used in this
18 Consent Decree which are defined in CERCLA or in regulations promulgated
19 under CERCLA shall have the meaning assigned to them in CERCLA or in such
20 regulations. Whenever terms listed below are used in this Consent Decree or in the
21 appendices attached hereto and incorporated hereunder, the following definitions
22 shall apply:
23

24
25 "CDCPG" shall mean the Cooper Drum Cooperating Parties Group, the
26 Respondents to the Order who are currently implementing the Remedial Action at
27 the Site pursuant to a Consent Decree entered by this Court on April 20, 2016 in
28

1 the case of *United States of America and the State of California v. AC Products*
2 *Inc. et,al.*, 2:15-cv-09931(C.D.Cal.).
3

4 “CERCLA” shall mean the Comprehensive Environmental Response,
5 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
6

7 “Certificate of Completion” shall mean EPA’s written determination that the
8 Remedial Action has been performed and that the performance standards have
9 been achieved.
10

11 “Closing Costs” shall mean those deductions from the Purchase Price by
12 Settling Defendants, other than the payment to Plaintiff required by Section VI of
13 this Consent Decree, of the expenses of the sale of the Property, approved by EPA
14 and set out in the Escrow Statement. EPA will not approve any closing cost which
15 would reduce the Net Sales Proceeds, as defined herein below, to an amount less
16 than \$2,500,000.
17

18 “Consent Decree” shall mean this Decree and all appendices attached hereto.
19
20 In the event of conflict between this Decree and any appendix, this Decree shall
21 control.
22

23 “Contract for Sale” shall mean the Standard Offer, Agreement and Escrow
24 Instructions for Purchase of Real Estate dated December 9, 2010 between Autumn
25 Holding Group LLC as “Buyer” and Cooper Living Trust and Cooper Properties,
26 LP as “Sellers”, including the Addenda thereto.
27
28

1 “Day” shall mean a calendar day. In computing any period of time under this
2 Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or
3 State holiday, the period shall run until the close of business of the next working
4 day.
5

6 “Effective Date” shall mean the date upon which the approval of this
7 Consent Decree is recorded on the Court’s docket.
8

9 “EPA” shall mean the United States Environmental Protection Agency and
10 its successor departments, agencies or instrumentalities.
11

12 “Escrow Statement” shall mean that accounting of the proceeds of the
13 Transfer prepared by the Escrow Holder identified in the Contract for Sale which
14 shall set out the Purchase Price, the Closing Costs, the Net Sales Proceeds, and the
15 Payment to EPA of the greater of \$2,500,000 or 90% of the Net Sales Proceeds.
16
17

18 “Interest” shall mean interest at the rate specified for interest on investments
19 of the EPA Hazardous Substance Superfund, compounded annually on October 1
20 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of
21 interest shall be the rate in effect at the time the interest accrues. The rate of
22 interest is subject to change on October 1 of each year. Rates are available online
23 at <https://www.epa.gov/superfund/superfund-interest-rates>.
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1 “Net Sales Proceeds,” shall mean the total value of all consideration for the
2 Transfer of the Property as provided in the Contract for Sale and the Escrow
3 Statement, less Closing Costs approved by EPA.
4

5 “Order” shall mean Unilateral Administrative Order 2009-07, issued by EPA
6 Region 9 to 43 Respondents at the Site on February 10, 2009.
7

8 “Paragraph” shall mean a portion of this Consent Decree identified by an
9 Arabic numeral or an upper case letter.
10

11 “Parties” shall mean the United States and the Settling Defendants.

12 “Plaintiff” shall mean the United States.
13

14 “Purchase Price” shall mean the amount set out in the Contract for Sale to be
15 paid by Purchaser for the Property.
16

17 “Record of Decision” or “ROD” shall mean the EPA Record of Decision for
18 the Cooper Drum Company Superfund Site signed on September 27, 2002 by the
19 Regional Administrator, EPA Region IX, or his/her delegate, and all attachments
20 thereto.
21

22 “Remedial Action” shall mean the remedial action selected in the ROD.
23

24 “Response Costs” shall mean all costs, including, but not limited to, direct or
25 indirect costs, that the United States has paid or will pay in connection with the
26 Site, that are not inconsistent with the NCP.
27
28

1 “Section” shall mean a portion of this Consent Decree identified by a
2 Roman numeral.

3
4 “Settling Defendants” shall mean Cooper Living Trust and Cooper
5 Properties, LP.

6
7 “Site” shall mean the Cooper Drum Company Superfund Site, located in
8 South Gate, Los Angeles County, California, and depicted generally on the map
9 attached as Appendix A.

10
11 “Transfer” shall mean the sale of the Property pursuant to the Contract for
12 Sale, or pursuant to any modification of the Contract for Sale approved in writing
13 by EPA.

14
15 “United States” shall mean the United States of America and each
16 department, agency, and instrumentality of the United States, including EPA.

17
18 “Waste Material” shall mean (1) any “hazardous substance” under Section
19 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant
20 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste”
21 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27). “Work” shall mean all
22 activities required to be performed to implement the ROD at the Site.
23
24

25 V. Statement of Purpose

26 4. Objectives of the Parties. The objectives of the Parties in entering
27 into this Consent Decree are (1) to protect public health or welfare and the
28

1 environment at the Site by the implementation of and compliance with access
2 agreements and land/water use restrictions at the Parcels by the Settling
3 Defendants, and (2) to resolve the claims of Plaintiff against Settling Defendants,
4 including termination of the Order, as to the Settling Defendants, by a cash
5 payment from Settling Defendants to Plaintiff as provided in this Consent Decree.
6
7

8 To effectuate these objectives, Settling Defendants represent that:

9 a. Settling Defendant Cooper Living Trust owns the Trust Parcel
10 and Settling Defendants Cooper Living Trust and Cooper Properties, LP own the
11 Property. Settling Defendants shall sell the Property pursuant to the Transfer and
12 EPA shall receive 90% of the Net Sales Proceeds from the Transfer or \$2,500,000,
13 whichever is greater.
14
15

16 b. Settling Defendants shall make best efforts to cooperate with
17 any persons implementing Remedial Action pursuant to the ROD under EPA's
18 oversight, including, without limitation, the CDCPG.
19
20

21 c. At least 30 days prior to the conveyance of any interest in the
22 Trust Parcel or, except for the Transfer, of any interest in the Property, including,
23 but not limited to, fee interests, leasehold interests, and mortgage interests, Settling
24 Defendants shall give the grantee written notice of this Consent Decree. At least
25 15 days prior to such conveyance, Settling Defendants shall also give written
26 notice to EPA of the proposed conveyance, including the name and address of the
27
28

1 grantee, and the date on which notice of the Consent Decree was given to the
2 grantee.
3

4 d. In the event of any such conveyance, the Settling Defendants'
5 obligations under this Consent Decree, including, but not limited to, their
6 obligation to abide by the land/water use restrictions described in Paragraph 13,
7 shall continue to be met by the Settling Defendants to the extent they retain control
8 over the Trust Parcel and/or the Property.
9
10

11 VI. Payment by Settling Defendants

12 5. Settling Defendants shall complete, and cooperate in the completion
13 of, the Transfer of the Property as provided in the Contract for Sale. Settling
14 Defendants agree to instruct the Escrow Holder identified in the Contract for Sale
15 to pay EPA the greater of \$2,500,000 or 90% of the Net Sales Proceeds from the
16 Transfer pursuant to the Contract for Sale as provided in the Escrow Statement.
17
18

19 6. Payment shall be made at <https://www.pay.gov> to the U.S. EPA
20 account in accordance with instructions to be provided by EPA.
21

22 7. The total amount to be paid to EPA from the escrow as provided in
23 Paragraph 5 may be deposited in the Cooper Drum Company Special Account to
24 be retained and used to conduct or finance response actions at or in connection
25 with the Site or may be deposited in the EPA Hazardous Substance Superfund.
26
27
28

1 VII. Failure to Comply with Consent Decree Requirements

2 8. Interest on Late Payments. If Settling Defendants fail to make any
3 payment under Paragraph 5 within 30 days of the Effective Date of this Consent
4 Decree, then Settling Defendants shall pay Interest on the unpaid balance,
5 commencing on the date that payment is due and accruing through the date of
6 payment.
7

8 9. Stipulated Penalties.

9 a. In addition to the Interest required by Paragraph 8, if Settling
10 Defendants fail to remit the payment to the United States required by Paragraph 5
11 when due, then Settling Defendants also shall pay stipulated penalties to the United
12 States of \$1,000 per day for each day that their payment is late. Stipulated
13 penalties are due and payable to the United States within 30 days of the date of the
14 demand for payment of the penalties by the United States.
15

16 b. Penalties shall accrue as provided in this Paragraph regardless
17 of whether EPA has notified Settling Defendants of the violation or made a
18 demand for payment, but need only be paid upon demand. All penalties begin to
19 accrue on the day after payment is due and shall continue to accrue through the
20 date of payment.
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1 10. Payments made under this Section shall be in addition to any other
2 remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure
3
4 to comply with the requirements of this Consent Decree.

5 11. Notwithstanding any other provision of this Section, the United States
6 may, in its unreviewable discretion, waive payment of any portion of the stipulated
7
8 penalties that have accrued to the United States pursuant to this Consent Decree.

9
10 VIII. Access and Institutional Controls

11 12. Settling Defendants shall, commencing on the date of lodging of this
12 Consent Decree, provide the United States, its representatives, including EPA and
13
14 its contractors, and any PRPs conducting response actions at the Site under EPA
15 oversight, including without limitation the CDCPG, including their agents and
16
17 contractors, with access at all reasonable times to the Trust Parcel and, to the
18 extent that and as long as either Settling Defendant has any rights in or control of
19
20 the Property, to the Property, for the purpose of conducting any response actions
21
22 related to the Site including, but not limited to, the following activities:

23 (1) Monitoring of investigation, removal, remedial or other
24 response actions at the Site;

25 (2) Verifying any data or information submitted to the United
26
27 States;

1 (3) Conducting investigations relating to contamination at or near
2 the Site;

3
4 (4) Obtaining samples;

5 (5) Assessing the need for, planning, or implementing additional
6 response actions at or near the Site;

7
8 (6) Inspecting and copying records, operating logs, contracts, or
9 other documents maintained or generated by Settling Defendants or their agents,
10 consistent with Section XIII (Access to Information);

11
12 (7) Assessing Settling Defendants' compliance with this Consent
13 Decree;

14
15 (8) Determining whether the Site or other property is being used in
16 a manner that is prohibited or restricted, or that may need to be prohibited or
17 restricted, by or pursuant to this Consent Decree;

18
19 (9) Installing, monitoring, and maintaining liquid, groundwater,
20 soil gas and other wells or probes; and

21
22 (10) Installing, monitoring, and operating any monitoring and
23 extraction system, including liquids and gas extraction systems.

24
25 13. Land/Water Use Restrictions. Settling Defendants shall, commencing
26 on the date of lodging of this Consent Decree, refrain from using the Trust Parcel
27 and the Property in any manner that would interfere with or adversely affect the
28

1 implementation, integrity, or protectiveness of the remedial measures implemented
2 pursuant to the ROD. Settling Defendants shall comply with the following
3
4 land/water use restrictions on the Trust Parcel and, to the extent that and as long as
5 either Settling Defendant has any rights in or control of the Property, on the
6
7 Property:

8 (1) Placement of warning signs or other posted information shall be
9
10 allowed and, once posted, no removal or interference with such signs or
11 information shall be permitted;

12 (2) Placement of Site access controls, such as gates or fencing,
13
14 shall be allowed and shall not be damaged or circumvented;

15 (3) Use in any manner that may interfere with or affect the integrity
16
17 of the Remedial Actions;

18 (4) Construction not approved by EPA that impacts any of the
19
20 Remedial Action components shall not occur;

21 (5) No interferences with or alterations to any grading, vegetation
22
23 and surface water and drainage controls which are components of the Remedial
24 Action shall be made;

25 (6) Portions underlain by Waste Materials shall not be regraded
26
27 without the written consent of EPA;
28

1 (7) Areas of asphalt or concrete pavement shall not be removed or
2 improved without the written consent of EPA;
3

4 (8) No new openings shall be made in building floor slabs in
5 buildings located over Waste Materials without the written consent of EPA;
6

7 (9) Integrity of existing and future foundations shall be maintained
8 in areas underlain by Waste Materials;

9 (10) Soil gas control systems shall not be turned off or interfered
10 with;
11

12 (11) Monitoring points, including but not limited to groundwater
13 monitoring wells and soil gas probes, shall not be blocked or otherwise obstructed;
14

15 (12) Monitoring wells shall not be opened; nothing shall be placed
16 into the monitoring wells;
17

18 (13) Liquids recovery systems, liquids treatment systems, and
19 treated liquids storage facilities shall not be turned off or interfered with;
20

21 (14) Groundwater supply or monitoring wells shall not be
22 constructed without the written consent of EPA;
23

24 (15) Settling Defendants shall disclose all land/water use restrictions
25 to all tenants;

26 (16) Settling Defendants shall inform EPA of the identities of all
27 tenants;
28

1 (17) During construction, excavation, or grading of any type,
2 Settling Defendants shall take measures to ensure that there is no offsite migration
3 of dust, odors or organic vapors. During such activities, Settling Defendants shall
4 take appropriate measures to protect the health and welfare of onsite personnel and
5 workers and to prevent offsite impacts;
6

7
8 (18) Settling Defendants must obtain prior written approval for all
9 building or site modifications from EPA;
10

11 (19) Settling Defendants shall not excavate Waste Materials;

12 (20) No new construction shall occur without the prior written
13 approval of EPA; and
14

15 (21) Boreholes, foundation piles, or other subsurface penetrations
16 into any area which could create conduits allowing Waste Materials to migrate to
17 groundwater shall not be made.
18

19 14. If EPA determines that institutional controls on the Parcels, including,
20 but not limited to, environmental restriction covenants under state or local laws,
21 regulations, ordinances, or other governmental controls are needed to implement
22 the Remedial Action selected in the ROD, ensure the integrity and protectiveness
23 thereof, ensure non-interference therewith, or otherwise protect public health or
24 welfare and the environment, Settling Defendants shall cooperate with EPA's
25 efforts to secure such institutional controls.
26
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1 15. Notwithstanding any provision of this Consent Decree, the United
2 States retains all of its access authorities and rights, as well as all of its rights to
3
4 require land use restrictions, including enforcement authorities related thereto,
5 under CERCLA, RCRA and any other applicable statute or regulations.
6

7 IX. Covenant by Plaintiff

8 16. United States' Covenant Not to Sue. In consideration of the actions
9 that will be performed and the payments that will be made by the Settling
10 Defendants under the terms of the Consent Decree, and except as specifically
11 provided in Section X (Reservation of Rights), the United States covenants not to
12 sue or to take administrative action against Settling Defendants pursuant to
13 Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607, for response
14 actions or response costs at or relating to the Site. These covenants not to sue shall
15 take effect upon the receipt by EPA of the payment required by Section VI
16 (Payment by Settling Defendants) and any amount due under Section VII (Failure
17 to Comply with Consent Decree Requirements). These covenants not to sue are
18 conditioned upon the satisfactory performance by Settling Defendants of all
19 obligations under this Consent Decree. These covenants extend only to the Settling
20 Defendants and do not extend to any other person.
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X. Reservation of Rights

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2 17. Plaintiff's Pre-certification Reservations. Notwithstanding any other
3
4 provision of this Consent Decree, the United States reserves, and this Consent
5 Decree is without prejudice to, the right to institute proceedings in this action or in
6
7 a new action, or to issue an administrative order seeking to compel Settling
8 Defendants to perform further response actions relating to the Site and/or to pay
9
10 the United States for additional costs of response if, (a) prior to certification of
11 completion of the Remedial Action, (1) conditions at the Site, previously unknown
12 to EPA, are discovered, or (2) information, previously unknown to EPA, is
13
14 received, in whole in part, and (b) EPA determines that these previously unknown
15 conditions or information together with any other relevant information indicates
16
17 that the Remedial Action is not protective of human health or the environment.

18 18. Plaintiff's Post-certification Reservations. Notwithstanding any other
19
20 provision of this Consent Decree, the United States reserves, and this Consent
21 Decree is without prejudice to, the right to institute proceedings in this action or in
22
23 a new action, and/or to issue an administrative order, seeking to compel Settling
24 Defendants to perform further response actions relating to the Site and/or to pay
25
26 the United States for additional costs of response if, (a) subsequent to certification
27 of completion of the Remedial Action, (1) conditions at the Site, previously
28 unknown to EPA, are discovered, or (2) information, previously unknown to EPA,

1 is received, in whole or in part, and (b) EPA determines that these previously
2 unknown conditions or this information together with other relevant information
3
4 indicate that the Remedial Action is not protective of human health or the
5 environment.

6
7 19. For purposes of Paragraph 17, the information and the conditions
8 known to EPA shall include only that information and those conditions known to
9 EPA as of the date the ROD was signed and set forth in the ROD for the Site and
10 the administrative record supporting the ROD. For purposes of Paragraph 18, the
11 information and the conditions known to EPA shall include only that information
12 and those conditions known to EPA as of the date of certification of completion of
13 the Remedial Action and set forth in the ROD, the administrative record supporting
14 the ROD, the post-ROD administrative record, or in any information received by
15 EPA pursuant to the requirements of this Consent Decree prior to certification of
16 completion of the Remedial Action.
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21 20. General Reservation of Rights. The United States reserves, and this
22 Consent Decree is without prejudice to, all rights against Settling Defendants with
23 respect to all matters not expressly included within the United States' covenants.
24 (Section IX Covenant by Plaintiff). Notwithstanding any other provision of this
25 Consent Decree, the United States reserves all rights against Settling Defendants
26
27
28 with respect to:

1 a. liability for failure of Settling Defendants to meet a requirement
2 of this Consent Decree;

3
4 b. liability for costs incurred or to be incurred by the United States
5 that are not within the definition of Response Costs;

6
7 c. criminal liability;

8 d. liability for damages for injury to, destruction of, or loss of
9 natural resources, and for the costs of any natural resource damage assessments.
10

11 XI. Covenants by Settling Defendants

12 21. Settling Defendants covenant not to sue and agree not to assert any
13 claims or causes of action against the United States, or its contractors or
14 employees, with respect to Response Costs and this Consent Decree, including, but
15 not limited to:
16

17
18 a. any direct or indirect claim for reimbursement from the EPA
19 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or
20 113 of CERCLA 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any
21 other provision of law;
22

23
24 b. any claim arising out of the response actions at the Site for
25 which the Response Costs were incurred, including any claim under the United
26 States Constitution, the Constitution of the State of California, the Tucker Act,
27 28 U.S.C. §1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common
28

1 law; or

2 c. any claim pursuant to Section 107 or 113 of CERCLA,
3
4 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972, or state
5 law for Response Costs

6
7 22. Nothing in this Consent Decree shall be deemed to constitute approval
8 or preauthorization of a claim within the meaning of Section 111 of CERCLA,
9 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

10
11 23. Settling Defendants agree not to assert any claims and to waive all
12 claims or causes of action (including but not limited to claims or causes of action
13 under Section 107(a) and 113 of CERCLA) that they may have for all matters
14 relating to the Site against any person where the person's liability to Settling
15 Defendants with respect to the Site is based solely on having arranged for disposal
16 or treatment, or for transport for disposal or treatment, of hazardous substances at
17 the Site, or having accepted for transport for disposal or treatment of hazardous
18 substances at the Site, if all or part of the disposal, treatment, or transport occurred
19 before April 1, 2001, and the total amount of material containing hazardous
20 substances contributed by such person to the Site was less than 110 gallons of
21 liquid materials or 200 pounds of solid materials.
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1 XII. Effect of Settlement: Contribution Protection

2 24. Except as provided in Paragraph 20, nothing in this Consent Decree
3
4 shall be construed to create any rights in, or grant any cause of action to, any
5 person not a Party to this Consent Decree. Except as provided in Section XI
6 (Covenants by Settling Defendants) each of the Parties expressly reserves any and
7 all rights (including, but not limited to, pursuant to Section 113 of CERCLA,
8 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may
9 have with respect to any matter, transaction, or occurrence relating in any way to
10 the Site against any person not a Party hereto. Nothing in this Consent Decree
11 diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of
12 CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain
13 additional response costs or response action and to enter into settlements that give
14 rise to contribution protection pursuant to Section 113(f)(2).
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19 25. The Parties agree, and by entering this Consent Decree this Court
20 finds, that this Consent Decree constitutes a judicially-approved settlement
21 pursuant to which each Settling Defendant has, as of the Effective Date, resolved
22 liability to the United States within the meaning of Section 113(f)(2) of CERCLA,
23 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from
24 contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as
25 may otherwise be provided by law, for the “matters addressed” in this Consent
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1 Decree. The “matters addressed” in this Consent Decree are all response actions
2 taken or to be taken and all response costs incurred or to be incurred, at or in
3 connection with the Site, by the United States or any other person, except for the
4 State of California; provided, however, that if the United States exercises rights
5 under the reservations in Section X (Reservation of Rights by United States)
6 Paragraph 20, other than in Paragraph 20(a) (claims for failure to meet a
7 requirement of this Consent Decree), or Paragraph 20(c) (criminal liability), the
8 “matters addressed” in this Consent Decree will no longer include those response
9 costs or response that are within the scope of the exercised reservation.
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14 26. The Parties further agree, and by entering this Consent Decree this
15 Court finds, that the complaint filed by the United States in this action is a civil
16 action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C.
17 § 9613(f)(1), and that this Consent Decree constitutes a judicially approved
18 settlement pursuant to which each Settling Defendant has, as of the Effective Date,
19 resolved its liability to the United States within the meaning of Section
20 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).
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24 27. Each Settling Defendant shall, with respect to any suit or claim
25 brought by it for matters related to this Consent Decree, notify the United States in
26 writing no later than 60 days prior to the initiation of such suit or claim.
27

28 28. Each Settling Defendant shall, with respect to any suit or claim

1 brought against it for matters related to this Consent Decree, notify in writing the
2 United States within 10 days after service of the complaint or claim upon such
3 Settling Defendant. In addition, each Settling Defendant shall notify the United
4 States within 10 days after service or receipt of any Motion for Summary Judgment
5 and within 10 days of receipt of any order from a court setting a case for trial.
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8 29. In any subsequent administrative or judicial proceeding initiated by
9 the United States for injunctive relief, recovery of response costs, or other relief
10 relating to the Site, Settling Defendants shall not assert, and may not maintain, any
11 defense or claim based upon the principles of waiver, res judicata, collateral
12 estoppel, issue preclusion, claim-splitting, or other defenses based upon any
13 contention that the claims raised by the United States in the subsequent proceeding
14 were or should have been brought in the instant case; provided, however, that
15 nothing in this Paragraph affects the enforceability of the covenants not to sue set
16 forth in Section IX (Covenant by Plaintiff).
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21 XIII. Access to Information

22 30. Settling Defendants shall provide to EPA, upon request, copies of all
23 documents and information within their possession or control or that of their
24 contractors or agents relating to activities at the Site or to the implementation of
25 this Consent Decree, including, but not limited to, sampling, analysis, chain of
26 custody records, manifests, trucking logs, receipts, reports, sample traffic routing,
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1 correspondence, or other documents or information related to the Site.

2 31. Confidential Business Information and Privileged Documents.

3
4 a. Settling Defendants may assert business confidentiality claims
5 covering part or all of the documents or information submitted to Plaintiff under
6 this Consent Decree to the extent permitted by and in accordance with Section
7 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
8 Documents or information determined to be confidential by EPA will be afforded
9 the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
10 confidentiality accompanies documents or information when they are submitted to
11 EPA, or if EPA has notified Settling Defendants that the documents or information
12 are not confidential under the standards of Section 104(e)(7) of CERCLA or
13 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or
14 information without further notice to Settling Defendants.
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19 b. Settling Defendants may assert that certain documents, records
20 and other information are privileged under the attorney-client privilege or any
21 other privilege recognized by federal law. If the Settling Defendants assert such a
22 privilege in lieu of providing documents, they shall provide the Plaintiff with the
23 following: (1) the title of the document, record, or information; (2) the date of the
24 document, record, or information; (3) the name, title, affiliation (e.g. company or
25 firm), and address of the author of the document, record, or information; (4) the
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1 name and title of each addressee and recipient; (5) a description of the subject of
2 the document, record, or information: and (6) the privilege asserted by Settling
3 Defendants. However, no document, report or other information created or
4 generated pursuant to the requirements of the Consent Decree shall be withheld on
5 the grounds that it is privileged.
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8 32. No claim of confidentiality shall be made with respect to any data,
9 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,
10 scientific, chemical, or engineering data, or any other documents or information
11 evidencing conditions at or around the Site.
12

13 XIV. Retention of Records

14 33. Until 10 years after the Settling Defendants' receipt of EPA's
15 notification, transmitted pursuant to Paragraph 35 (Notices and Submissions), of
16 the issuance of EPA's Certificate of Completion of the Work, Settling Defendants
17 shall preserve and retain all non-identical copies of records and documents
18 (including records or documents in electronic form) now in their possession or
19 control or which come into their possession or control that relate in any manner to
20 response actions taken at the Site or liability of any person for response actions
21 conducted or to be conducted at the Site, regardless of any corporate retention
22 policy to the contrary.
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1 34. At the conclusion of this document retention period, Settling
2 Defendants shall notify the United States at least 90 days prior to the destruction of
3 any such records or documents, and, upon request by the United States, Settling
4 Defendants shall deliver any such records or documents to EPA. Settling
5 Defendants may assert that certain documents, records and other information are
6 privileged under the attorney-client privilege or any other privilege recognized by
7 federal law. If Settling Defendants assert such a privilege, they shall provide the
8 Plaintiff with the following: (1) the title of the document, record, or information;
9 (2) the date of the document, record, or information; (3) the name, title, affiliation
10 (e.g. company or firm), and address of the author of the document, record, or
11 information; (4) the name and title of each addressee and recipient; (5) a
12 description of the subject of the document, record, or information; and (6) the
13 privilege asserted by Settling Defendants. However, no document, report or other
14 information created or generated pursuant to the requirements of the Consent
15 Decree shall be withheld on the grounds that it is privileged.
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22 XV. Notices and Submissions

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24 35. Whenever, under the terms of this Consent Decree, written notice is
25 required to be given or a report or other document is required to be sent by one
26 Party to another, it shall be directed to the individuals at the addresses specified
27 below, unless those individuals or their successors give notice of a change to the
28

1 other Parties in writing. All notices and submissions shall be considered effective
2 upon receipt, unless otherwise provided. Written notice as specified herein shall
3 constitute complete satisfaction of any written notice requirement of the Consent
4 Decree with respect to the United States, EPA, and Settling Defendants,
5 respectively.
6
7

8 As to the United States: Chief, Environmental Enforcement Section
9 Environment and Natural Resources Division
10 U.S. Department of Justice
11 P.O. Box 7611
12 Washington, D.C. 20044-7611
13 Re: DJ # 90-11-2-09084

14 As to EPA: Karen Jurist
15 EPA Project Coordinator
16 United States Environmental Protection Agency
17 Region IX
18 75 Hawthorne St.
19 San Francisco, CA 94105
20 Re: Cooper Drum Company Superfund Site

21 As To Settling Defendants Michael T. Lyons
22 Law Office of Michael T. Lyons
23 924 Anacapa Street, Suite B-4
24 Santa Barbara, CA 93101

25 XVI. Retention of Jurisdiction

26 36. This Court retains jurisdiction over this matter for the purpose of
27 interpreting and enforcing the terms of this Consent Decree.
28

1 XVII. Appendices

2 37. The following appendix is attached to and incorporated into this
3
4 Consent Decree:

5 “Appendix A” is the Map of the Site.

6
7 XVIII. Lodging and Opportunity for Public Comment

8 38. This Consent Decree shall be lodged with the Court for a period of not
9
10 less than thirty (30) days for public notice and comment in accordance with
11 Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7.
12 The United States reserves the right to withdraw or withhold its consent if the
13
14 comments regarding the Consent Decree disclose facts or considerations which
15
16 indicate that the Consent Decree is inappropriate, improper, or inadequate.
17 Settling Defendants consent to the entry of this Consent Decree without further
18
19 notice.

20 39. If for any reason the Court should decline to approve this Consent
21
22 Decree in the form presented, this agreement is voidable at the sole discretion of
23
24 any Party and the terms of the agreement may not be used as evidence in any
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26 litigation between the Parties.

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28 XIX. Signatories/Service

40. The undersigned representatives of the Settling Defendants and the
Section Chief for the Environmental Enforcement Section of the Environment and

1 Natural Resources Division of the United States Department of Justice certify that
2 he or she is fully authorized to enter into the terms and conditions of this Consent
3 Decree and to execute and legally bind such Party to this document.
4

5 41. Settling Defendants hereby agree not to oppose entry of this Consent
6 Decree by this Court or to challenge any provision of this Consent Decree unless
7 the United States has notified the Settling Defendants in writing that it no longer
8 supports entry of the Consent Decree.
9
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11 42. Each Settling Defendant shall identify, on the attached signature page,
12 the name, address and telephone number of an agent who is authorized to accept
13 service of process by mail on its behalf with respect to all matters arising under or
14 relating to this Consent Decree. Each Settling Defendant hereby agrees to accept
15 service in that manner and to waive the formal service requirements set forth in
16 Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of
17 this Court, including, but not limited to, service of a summons. The parties agree
18 that Settling Defendants need not file an answer to the complaint in this action
19 unless or until the court expressly declines to enter this Consent Decree.
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23 XX. Termination of Order
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25 43. Upon entry of this Consent Decree, Unilateral Order 2009-07 is
26 terminated as to these Settling Defendants.
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XXI. Final Judgment

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

SO ORDERED THIS __ DAY OF _____, 2017.

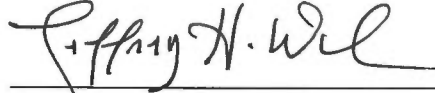
United States District Judge

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
2 United States v. Cooper Living Trust and Cooper Properties, LP

3 For the United States:
4
5

6
7 10/25/17

8 Date



9 JEFFREY H. WOOD

10 Acting Assistant Attorney General
11 Environment and Natural Resources Division
12 U.S. Department of Justice
13 Washington, D.C. 20530

14
15 10-10-2017

16 Date




17 Cheryl A. Luke

18 Environmental Enforcement Section
19 Environment and Natural Resources Division
20 U.S. Department of Justice
21 P.O. Box 7611
22 Washington, D.C. 20044-7611
23
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
2 United States v. Cooper Living Trust and Cooper Properties, LP

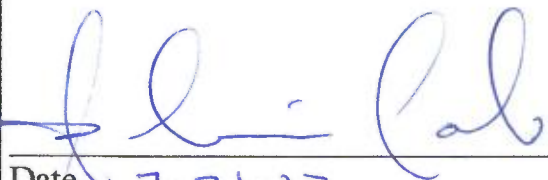
3 For EPA:
4
5

6 October 12, 2017
7 Date

8 
9 Enrique Manzanilla
10 Director, Superfund Division
11 U.S. Environmental Protection Agency
12 Region IX
13 75 Hawthorne St.
14 San Francisco, CA 94105
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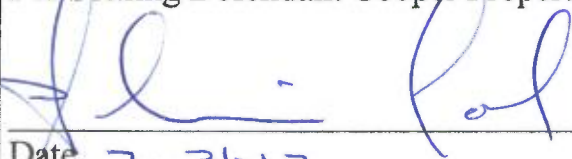
1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
2 United States v. Cooper Living Trust and Cooper Properties, LP

3 For Settling Defendant Cooper Living Trust

4 
5 _____

6 Date 7-31-17

8
9 For Settling Defendant Cooper Properties, LP

10 
11 _____

12 Date 7-31-17

13
14 Agent Authorized to Accept Service on Behalf of Above-Signed Parties

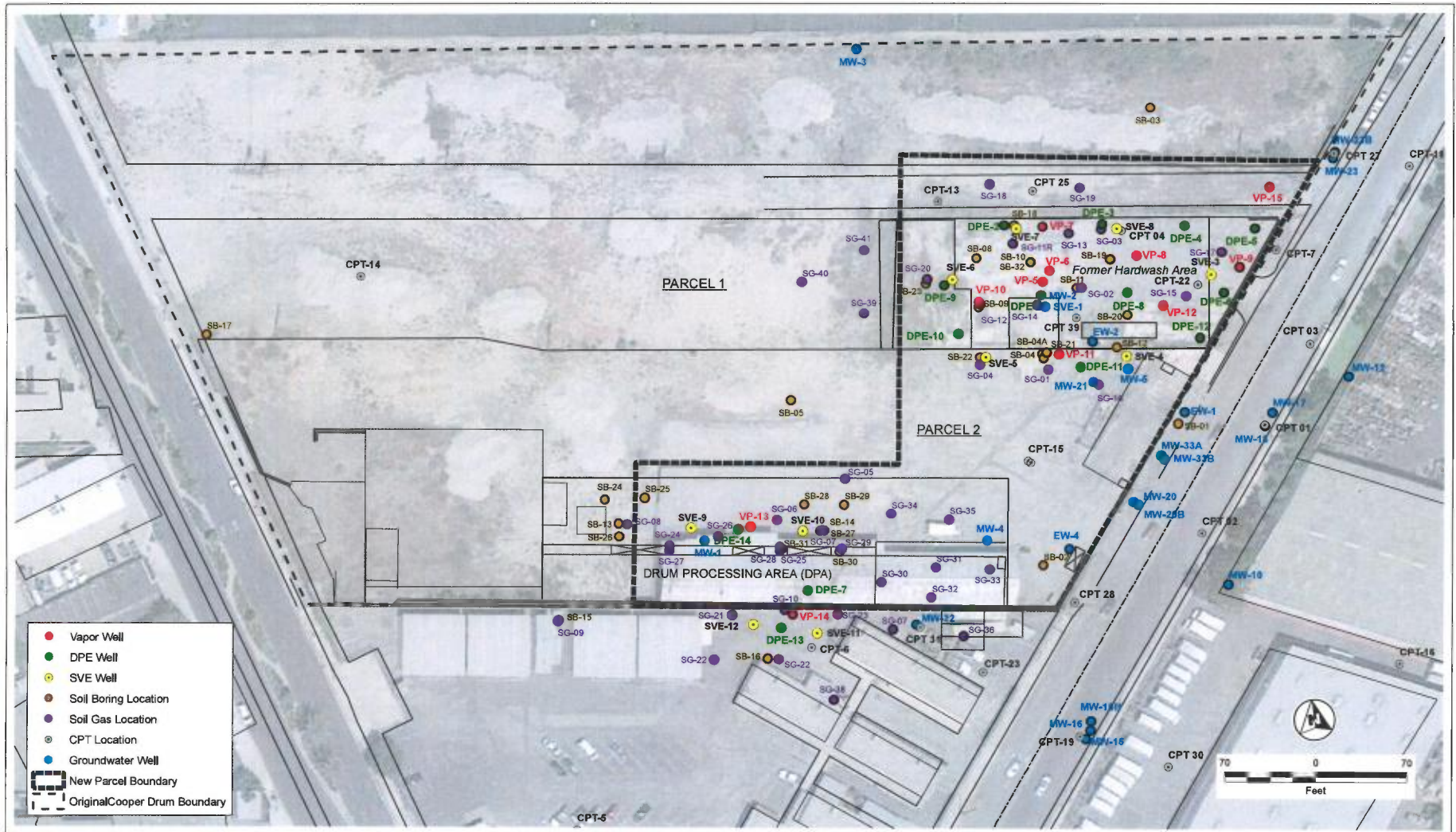
15 
16 _____

17 Date 7-31-17

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APPENDIX A

To Consent Decree in the Case of United States of America v,
Cooper Living Trust, Cooper Properties, LP (C.D. Cal.)



ITSI Gilbane

COOPER DRUM SUPERFUND SITE
 SOUTH GATE, LOS ANGELES COUNTY, CALIFORNIA
 US ENVIRONMENTAL PROTECTION AGENCY

FIGURE 2
 PARCEL 1 AND PARCEL 2
 RI AND RD/RA SAMPLING LOCATIONS