

CONFORMED COPY

1 KAMALA D. HARRIS
Attorney General of California
2 BRIAN HEMBACHER
Supervising Deputy Attorney General
3 OLIVIA W. KARLIN
Deputy Attorney General
State Bar No. 150432
4 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-0473
Fax: (213) 897-2802
6 E-mail: Olivia.Karlin@doj.ca.gov
Attorneys for Plaintiff

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JUN 07 2012

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JUL 05 2012
LOS ANGELES SUPERIOR COURT

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 LOS ANGELES COUNTY

12 **PEOPLE OF THE STATE OF**
13 **CALIFORNIA, ex rel., CALIFORNIA**
DEPARTMENT OF TOXIC
14 **SUBSTANCES CONTROL,**
15 **Plaintiff,**
16 **v.**
17 **KVR INVESTMENT GROUP, INC. dba**
PACIFIC PLATING, DOES 1 to 20,
18 **Defendants,**

Case No. *BC 486135*
FINAL JUDGMENT ON CONSENT AND PERMANENT INJUNCTION

21 Good cause appearing herein, the Court finds that the settlement between the Plaintiff,
22 People of the State of California, and Defendant KVR Investment Group, Inc. dba Pacific Plating,
23 a California corporation, is fair and in the public interest. Accordingly, the Court enters the Final
24 Judgment on Consent and Permanent Injunction filed herewith.

25 **IT IS SO ORDERED.**

26
27 dated: JUL 05 2012 ~~2012~~

MICHAEL JOHNSON

Hon. Judge of the Superior Court

DEPT. 56

LOS ANGELES SUPERIOR COURT
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11 LOS ANGELES COUNTY

12 PEOPLE OF THE STATE OF
CALIFORNIA, *ex rel.*, CALIFORNIA
13 DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,
14
15 Plaintiff,
16
17 v.
18 KVR INVESTMENT GROUP, INC. dba
PACIFIC PLATING, DOES 1 to 20,
19
20 Defendants,

Case No. BC 486135
STIPULATION FOR SETTLEMENT
AND ENTRY OF JUDGMENT AND
PERMANENT INJUNCTION
(Code of Civil Procedure § 664.6)

21 Plaintiff People of the State of California *ex rel.* Department of Toxic Substances Control
22 ("Plaintiff," or the "Department") and Defendant KVR Investment Group, Inc. dba Pacific Plating
23 ("Pacific Plating"), a California Corporation ("Defendant" or "Pacific Plating") (collectively,
24 "the Parties") enter into this Stipulation for Settlement and Entry of Judgment and Permanent
25 Injunction ("Stipulation"), and stipulate as follows:

26 I. THE COMPLAINT

27 Concurrently with this Stipulation, the Department filed a Complaint for Civil Penalties
28 and Injunctive Relief pursuant to the Hazardous Waste Control Law, Health and Safety Code

LOS ANGELES SUPERIOR COURT
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1 Law, Health and Safety Code section 25100 et seq. ("HWCL") and its implementing regulations
2 against Defendant as a generator of hazardous waste and as an owner and operator of a metal
3 manufacturing facility located at 12113 Branford Street, Sun Valley, CA 91352. ("the Facility"),
4 where hazardous waste is generated and managed.

5 **2. AGREEMENT TO SETTLE DISPUTE**

6 The Parties enter into this Stipulation pursuant to a compromise and settlement of disputed
7 claims by mutually consenting to the entry by the Superior Court of the County of Los Angeles
8 (the "Court") of the Judgment and Permanent Injunction Pursuant to Stipulation in the form
9 attached as Exhibit 1 ("Judgment"). The Parties are each represented by counsel. The
10 Department is represented by the Office of the Attorney General, and Defendant is represented by
11 McKenna Long & Aldridge LLP. This Stipulation and the Judgment were negotiated and
12 executed in good faith and at arms' length by the Department and by Defendant to avoid
13 expensive and protracted litigation regarding the alleged violations of the HWCL and to further
14 the public interest.

15 **3. JURISDICTION AND VENUE**

16 The Department and Defendant agree that this Court has subject matter jurisdiction over
17 the matters alleged in the Complaint and personal jurisdiction over the Defendant. Venue is
18 proper pursuant to Health and Safety Code section 25183.

19 **4. WAIVER OF HEARING AND TRIAL AND ENTRY OF JUDGMENT**

20 ~~By signing and entering into this Stipulation, Defendant waives its right to a trial on~~
21 matters alleged in the Complaint. Further, the Department and Defendant request entry of the
22 Judgment on the terms set forth in this Stipulation.

23 **5. APPLICABILITY**

24 The provisions of this Stipulation and the Judgment shall apply to and be binding on: (a)
25 Pacific Plating, a California corporation, its subsidiaries and divisions, its parent companies, its
26 officers and directors, its successors and assignees or other entities, acting by, through, under or
27 on behalf of Pacific Plating; and (2) the Department and any successor agency of the Department
28 that may have responsibility for and jurisdiction over the subject matter of this Judgment.

1 **6. SETTLEMENT**

2 The Department and Defendant enter into this Stipulation as a compromise and settlement
3 of disputed claims for the purpose of avoiding prolonged and complicated litigation and in
4 furtherance of the public interest. The Department and Defendant both request entry of judgment
5 on the terms set forth in this Stipulation. The Department and Defendant agree that there has
6 been no adjudication of any fact or law.

7 **7. INJUNCTION**

8 Defendant shall comply with the following:

9 A. An independent, qualified, professional engineer who is registered in the State of
10 California shall inspect the Facility's permit-by-rule tank system according to the requirements of
11 California Code of Regulations, title 22, section 67450.3, subdivision (c)(9)(F).

12 B. Defendant shall inspect for spills and/or releases of hazardous waste on the floor,
13 walls and work areas of the Facility, and ensure that all equipment is functioning properly. In the
14 event of a spill or release of hazardous waste, Defendant shall take appropriate action consistent
15 with the Hazardous Waste Control Law. Defendant shall maintain a written daily log of the area
16 inspections of the Facility's rooms containing the Facility's plating process lines and equipment
17 at the Facility that, at a minimum, includes:

- 18 (1) whether spills or releases were observed; and
19 (2) any maintenance work done to any equipment that generates or manages
20 hazardous waste.

21 Any spills or releases discovered shall be cleaned up immediately and noted in the daily
22 log of inspections, including the amount of waste cleaned up. Defendant shall maintain the
23 inspection log on site as part of the Facility's operating record required by California Code of
24 Regulations, tit. 22, sections 66265.15 and 66265.73 and make the log available as required by
25 California Code of Regulations, tit. 22, section 66265.74.

26 **8. MONETARY SETTLEMENT REQUIREMENTS**

27 A. Judgment shall be entered in this matter for a civil penalty in the amount of two
28 hundred twenty-five thousand dollars (\$225,000), which is full amount of civil penalties for the

1 violations alleged. Defendant has represented, and it also certifies by signing below, that it does
2 not have the financial resources to pay the full penalty determined by the Department in this
3 matter. Accordingly, in reliance on Defendant's representations, and in settlement of this matter,
4 the Department agrees that civil penalties shall be paid in accordance with the provisions in
5 Section 8B, 8C, and 9A.

6 In settlement of this matter, the Department agrees that, provided that Defendant fully
7 complies with all of the injunctive provisions specified in Section 7 of this Stipulation, timely
8 makes the payment specified in section 8B in this Stipulation, does not commit a Class I
9 violation, as defined by California Code of Regulations, title 22, section 66260.10, in connection
10 with the ownership and operation of the Facility as provided in section 9A of this Stipulation, and
11 complies with section 8D of this Stipulation, Defendant's obligations pursuant to this Stipulation
12 and the Judgment regarding penalties will be fully satisfied.

13 B. Defendant shall pay the Department the sum of one hundred thousand dollars
14 ~~(\$100,000) in civil penalties in four equal payments over an 18-month period as follows: the first~~
15 payment of \$25,000 is due 30 days from the effective date of the stipulated judgment, and each
16 subsequent payment of \$25,000 is due 170 days thereafter.

17 C. Defendant may send up to five employees to the California Compliance School,
18 Modules I-IV. Attendance must be completed and Defendant must submit a Certificate of
19 Satisfactory Completion issued by the California Compliance School to the Department within
20 ~~180 days of this Judgment. In recognition of this educational investment, the civil penalty may be~~
21 reduced by up to \$1000 per employee if the employee satisfactorily completes the specified
22 school and the Department receives the certificate of Satisfactory Completion within 180 days of
23 the effective date of this Judgment. Defendant's last payment to the Department shall be reduced
24 for each employee's successful completion of compliance school accordingly.

25 D. All payments by Defendant to the Department pursuant to this Stipulation and the
26 Judgment shall be made by cashier's check, payable to the California Department of Toxic
27 Substances Control, and shall bear the following notation: "Pacific Plating" and shall be sent to:
28 ///

Cashier
Accounting Office, MS-21A
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

An electronic (i.e., Adobe PDF) copy or paper photocopy of all checks and payments made pursuant to the Stipulation and the Judgment shall be sent, at the same time, to:

Paul Kewin, Chief
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200
pkewin@dtsc.ca.gov

Joseph Smith, Senior Staff Counsel
Office of Legal Counsel, MS-23A
Department of Toxic Substances Control
1001 I Street
P.O. Box 806
Sacramento, CA 95812-0806
jsmith12@dtsc.ca.gov

~~9. SATISFACTION OF CIVIL PENALTY PAYMENT REQUIREMENT~~

A. If within five (5) years after the date of entry of the Judgment, the Defendant: (a) commits one or more Class I violation, as defined by California Code of Regulations, title 22, section 66260.10); (b) violates an injunctive provision of this Stipulation; or (c) fails to make the payments required by Sections 8B and 8C of this Stipulation and the Judgment, then the full amount of the two hundred twenty five thousand dollars (\$225,000) penalty, plus interest, will be immediately due and payable to the Department, less any payment(s) previously made by or on behalf of Defendant to the Department.

B. If the Department determines that Defendant has defaulted under the terms of this Stipulation or the terms of the Judgment, the Department will provide Defendant with written notice of the default. Such written notice constitutes Defendant's notice of its reasonable opportunity to cure the default on the terms required by the Department. If Defendant fails to cure the default within thirty calendar days of the date of the notice, the Department may proceed to pursue all its rights and remedies to enforce the Judgment. Nothing herein is intended, or shall be construed, to preclude the Department from initiating an enforcement action against

1 Defendant, as an alternative to enforcement of this Stipulation and the Judgment, for any
2 violations of the HWCL not alleged to date by the Department against Defendant.

3 **10. NOTICE**

4 All submissions and notices required by this Stipulation and the Judgment shall be in
5 writing, and shall be sent to:

6 For the Plaintiff:

7 Paul Kewin, Chief
8 State Oversight and Enforcement Branch
9 Enforcement and Emergency Response Program
10 Department of Toxic Substances Control
11 8800 Cal Center Drive
12 Sacramento, CA 95826-3200

13 Joseph, Senior Staff Counsel
14 Office of Legal Counsel
15 Department of Toxic Substances Control
16 1001 I Street, MS-23A
17 P.O. Box 806
18 Sacramento, CA 95812-0806

19 For Defendant:

20 Charles H. Pomeroy, Esq.
21 McKenna Long & Aldridge LLP
22 300 South Grand Avenue 14th Floor
23 Los Angeles, CA 90071-3124

24 All approvals and decisions regarding any matter requiring approvals or decisions under
25 the terms of this Stipulation and the Judgment shall be communicated in writing. Each Party may
26 change its respective representative(s) for purposes of notice by providing the name and address
27 of the new representative, in writing, to all Parties. Any such change will take effect within 7
28 calendar days of the date of the written notice.

11. AUTHORITY TO ENTER STIPULATION

Each signatory to this Stipulation certifies that he or she is fully authorized by the party he
or she represents to enter into this Stipulation, to execute it on behalf of the party represented, and
to legally bind that party.

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1 **12. NO WAIVER OF RIGHT TO ENFORCE**

2 The failure of the Department to enforce any provision of the Stipulation or Judgment
3 shall neither be deemed a waiver of such provision, nor in any way affect the validity of the
4 Judgment or the Department's enforcement authority. The failure of the Department to enforce
5 any such provision of this Stipulation or the Judgment shall not preclude it from later enforcing
6 the same or other provisions. No oral advice, guidance, suggestions, or comments by employees
7 or officials of the Department or Defendant, or people or entities acting on behalf of Defendant,
8 regarding matters covered in this Stipulation or the Judgment, shall be construed to relieve
9 Defendant of its obligations under this Stipulation or the Judgment.

10 **13. APPLICATION OF CONSENT JUDGMENT**

11 Both this Stipulation and the Judgment shall apply to and be binding on the Department
12 and upon Defendant, and upon their successors and assigns.

13 **14. EFFECT OF STIPULATION AND JUDGMENT**

14 ~~Except as expressly provided in this Stipulation or in the Judgment, nothing herein is~~
15 intended, nor shall it be construed, to preclude the Department, or any state, county, or local
16 agency, department board or entity, from exercising its authority under any law, statute, or
17 regulation.

18 **15. NO LIABILITY OF THE DEPARTMENT**

19 The Department shall not be liable for any injury or damage to persons or property
20 resulting from acts or omissions by Defendant, its officers, directors, employees, agents,
21 representatives, or contractors, in carrying out activities pursuant to this Stipulation or the
22 Judgment, nor shall the Department be held as a party to or guarantor of any contractor entered
23 into by Defendant, its officers, directors, employees, agents, representatives, or contractors, in
24 carrying out the requirements of this Stipulation or the Judgment.

25 **16. FUTURE REGULATORY CHANGES**

26 Nothing in this Stipulation or in the Judgment shall excuse Defendant from meeting any
27 more stringent requirements that may be imposed by applicable law or by changes in the
28 applicable law. To the extent future statutory and regulatory changes make Defendant's

1 obligations less stringent than those provided for in this Stipulation or in the Judgment, Defendant
2 may apply to this Court by noticed motion to modify the obligations contained herein.

3 **17. INTEGRATION**

4 This Stipulation and the Judgment constitute the entire agreement between the Parties, and
5 may not be amended or supplemented except as provided for in this Stipulation or in the
6 Judgment. No oral representations have been made or relied on other than as expressly set forth
7 herein.

8 **18. RETENTION OF JURISDICTION**

9 The Parties agree that the Court has continuing jurisdiction to interpret and enforce the
10 provisions of this Stipulation and the Judgment.

11 **19. EQUAL AUTHORSHIP**

12 This Stipulation and the Judgment shall be deemed to have been drafted equally by all
13 Parties hereto. The Parties agree that the rule of construction holding that ambiguity is construed
14 against the drafting party shall not apply to the interpretation of this Stipulation or the Judgment.

15 **20. AMENDMENTS TO THIS STIPULATION AND THE JUDGMENT**

16 This Stipulation and the Judgment may only be amended pursuant to a written agreement
17 signed by all the Parties, followed by written approval by the Court.

18 **21. COUNTERPARTS**

19 This Stipulation may be executed in several counterpart originals, all of which taken
20 together shall constitute an integrated document.

21 **22. ENTRY OF JUDGMENT PURSUANT TO STIPULATION**

22 The Parties further stipulate that upon approval of this Stipulation by the Court, the Court
23 shall enter the Judgment in this matter in the form set forth in the attached Exhibit 1. The
24 effective date of this Stipulation is the date this Stipulation is filed with the Court. The effective
25 date of the Judgment is the date the Judgment is entered by the Court. If the Court does not
26 approve this Stipulation and the Judgment in the form and substance proposed in Exhibit 1 hereto,
27 each party reserves the right to withdraw both the Stipulation and the Judgment upon written
28 notice to all Parties and the Court.

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IT IS SO STIPULATED.

Dated: May _____, 2012

For the Department of Toxic Substances Control

Paul Kewin, Chief
State Oversight and Enforcement Branch
Department of Toxic Substances Control

Dated: May _____, 2012

For Defendant:

KVR Investment Group, Inc. dba Pacific Plating, a
California corporation

Approved as to form:

KAMALA D. HARRIS
Attorney General of California
Brian Hembacher
Supervising Deputy Attorney General

Dated: June 7, 2012

Olivia W. Karl
OLIVIA W. KARLIN
Deputy Attorney General
Attorneys for Plaintiff

McKenna Long & Aldridge LLP

Dated: May _____, 2012

Charles H. Pomeroy

IT IS SO ORDERED.

JUL 05 2012

Dated: _____, *2012*

MICHAEL JOHNSON

Hon. Judge of the Los Angeles Superior Court