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Attorneys for Plaintiff United States of America

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

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UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ANAPLEX CORPORATION )  
 )  
Defendant. )  

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Civil Action No. 2:15-CV-3615

CONSENT DECREE

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1 I. INTRODUCTION

2 1. Plaintiff the United States of America, on behalf of the United States  
3 Environmental Protection Agency (“EPA”), has filed a complaint in this action  
4 alleging that Defendant Anaplex Corporation (“Anaplex”), violated the Clean  
5 Water Act, 33 U.S.C. § 1251 *et seq.*, and the Resource Conservation and Recovery  
6 Act, 42 U.S.C. § 6901 *et seq.*, and the Federal regulations promulgated thereunder.  
7

8 2. Anaplex is a corporation that is the owner and operator of a metal  
9 finishing facility at 15547 Garfield Avenue, Paramount, CA 90723 (“Facility”)  
10 where Anaplex performs metal finishing operations, including electroplating,  
11 electroless plating, anodizing, coating and chemical etching.  
12

13 3. The Complaint alleges that the Facility: (1) violated Sections 301 and  
14 307 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311 and 1317, and Federal  
15 regulations promulgated thereunder, 40 Code of Federal Regulations (“C.F.R.”)  
16 §§ 403.6 and 433.17, because Anaplex allegedly discharged pollutants, including  
17 cadmium, chromium, nickel and zinc from the Facility, into the Publicly Owned  
18 Treatment Works (“POTW”) owned and operated by the Los Angeles County  
19 Sanitation District (“County”) in excess of the Federal categorical pretreatment  
20 standards for the Metal Finishing Point Source category; (2) violated Sections 301  
21 and 307 of the CWA, 33 U.S.C. §§ 1311 and 1317, and Federal regulations  
22 promulgated thereunder, 40 C.F.R. § 433.12(c), because Anaplex allegedly did not  
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1 monitor for cyanide before dilution with other waste streams at the Facility; and (3)  
2 violated Sections 301 and 307 of the CWA, and Federal regulations promulgated  
3 thereunder, 40 C.F.R. § 403.6(d), because Anaplex allegedly utilized dilution at the  
4 Facility as a partial substitute for adequate treatment of wastewater generated  
5 during metal finishing operations.

7 4. The Complaint further alleges that Anaplex violated the requirements  
8 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et  
9 seq., and the California Hazardous Waste Control law, set forth at the California  
10 Health and Safety Code (“H&SC”) Division 20, Chapter 6.5, and the applicable  
11 regulations in 40 C.F.R. Parts 260-270, and in the California Code of Regulations  
12 (“CCR”), Title 22, Division 20,<sup>1</sup> by allegedly failing to determine whether solid  
13 wastes generated were hazardous; accumulating hazardous waste for longer than  
14 90 days; failing to label containers of hazardous waste as required; failing to close  
15 containers of hazardous waste; failing to maintain a complete contingency plan;  
16 failing to meet hazardous waste tank requirements; failing to meet training  
17 requirements; and failing to operate the facility so as to minimize the possibility of  
18 any unplanned sudden or non-sudden release of hazardous waste or hazardous  
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24 <sup>1</sup> EPA is enforcing California hazardous waste management program requirements as approved and  
25 authorized by the United States. Corresponding Federal citations are provided in brackets.  
26

1 waste constituents.

2 5. Anaplex does not admit any liability to the United States arising out of  
3 the transactions or occurrences alleged in the Complaint.  
4

5 6. The United States reviewed Financial Information and determined that  
6 Anaplex has a limited ability to pay a civil penalty proportionate to the alleged  
7 violations at issue in this matter.

8  
9 7. The Parties recognize, 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 will avoid litigation between the Parties and that this Consent Decree is fair,  
12 reasonable, and in the public interest.

13  
14 NOW, THEREFORE, before the taking of any testimony, without the  
15 adjudication or admission of any issue of fact or law except as provided in Section  
16 II (General Provisions), and with the consent of the Parties, IT IS HEREBY  
17 ORDERED as follows:

18  
19 II. GENERAL PROVISIONS

20 8. Jurisdiction and Venue. This Court has jurisdiction over the subject  
21 matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, 33 U.S.C.  
22 § 1319(b), and 42 U.S.C. § 6928(a) and over the Parties. Venue lies in this District  
23 pursuant to 28 U.S.C. §§ 1391(b) and 1395(a), 33 U.S.C. § 1319(b), and 42 U.S.C.  
24 § 6928(a), because the violations alleged in the Complaint are alleged to have  
25

1 occurred in this District, and the Facility is located in, and Anaplex conducts  
2 business in, this judicial district.

3  
4 9. Consent to Jurisdiction and Venue. For purposes of this Consent  
5 Decree, and any action to enforce this Consent Decree, Anaplex consents to the  
6 Court's jurisdiction over this Consent Decree and any such action and over  
7 Anaplex and consents to venue in this judicial district. For purposes of this  
8 Consent Decree, Anaplex agrees that the Complaint states claims upon which relief  
9 may be granted pursuant to 33 U.S.C. § 1319 and 42 U.S.C. § 6928(a).  
10

11 10. Retention of Jurisdiction. The Court shall retain jurisdiction over this  
12 Consent Decree until termination of this Consent Decree, for the purpose of  
13 resolving disputes arising under this Consent Decree or entering orders modifying  
14 this Consent Decree as provided in Paragraph 19 (Modification), and for  
15 effectuating or enforcing compliance with the terms of this Consent Decree.  
16

17 11. Applicability. The obligations of this Consent Decree apply to and  
18 are binding upon the United States and upon Anaplex and any of its successors,  
19 assigns, or other entities or persons otherwise bound by law.  
20

21 12. Transfer of Property.

22 a. No transfer of ownership or operation of the Facility, whether  
23 in compliance with the procedures of this Paragraph or otherwise, shall relieve  
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1 Anaplex of its obligation to ensure that the terms of this Consent Decree are  
2 implemented.

3           b.       At least thirty (30) Days prior to any such transfer, Anaplex  
4 shall provide a copy of this Consent Decree to the proposed transferee and shall  
5 promptly provide written notice of the prospective transfer, to the United States in  
6 accordance with Paragraph 18 (Notices). Any attempt to transfer ownership or  
7 operation of the Facility without complying with this Paragraph constitutes a  
8 violation of this Consent Decree.  
9

10  
11       13.   Distribution of Consent Decree. Anaplex shall provide a copy of this  
12 Consent Decree (by hard copy, electronic copy, or by providing online access to it  
13 with notice to the affected personnel) to all officers, employees, and agents whose  
14 duties would reasonably be expected to include compliance with any provision of  
15 this Consent Decree, as well as to any contractor retained by Anaplex to perform  
16 work required under this Consent Decree. Anaplex shall condition any such  
17 contract upon performance of the work in conformity with the terms of this  
18 Consent Decree.  
19

20  
21       14.   Responsibility of Anaplex. In any action to enforce this Consent  
22 Decree, Anaplex shall not raise as a defense the failure by any of its officers,  
23 directors, employees, agents, or contractors to take any actions necessary to  
24 comply with the provisions of this Consent Decree.  
25  
26

1           15.    Purpose of Consent Decree. It is the express purpose of this Consent  
2 Decree to further the objectives of the Clean Water Act and the Resource  
3 Conservation and Recovery Act, as well as the Federal regulations promulgated  
4 thereunder. All obligations in this Consent Decree shall have the objective of  
5 causing Anaplex to be and remain in full compliance with the Clean Water Act and  
6 Resource Conservation and Recovery Act.  
7

8           16.    Definitions. Terms used in this Consent Decree that are defined in the  
9 Clean Water Act or the Resource Conservation and Recovery Act, or in regulations  
10 promulgated pursuant to the Acts, shall have the meanings assigned to them in the  
11 Acts or such regulations, unless otherwise provided in this Consent Decree.  
12

13 Whenever the terms set forth below are used in this Consent Decree, the following  
14 definitions shall apply:  
15

16           a.    “Anaplex” shall mean the entity named as the Defendant in the  
17 Complaint.  
18

19           b.    “Clean Water Act” or “CWA” shall mean the Federal Water  
20 Pollution Control Act as amended and codified at 33 U.S.C. §§ 1251-1387.  
21

22           c.    “Complaint” shall mean the complaint filed by the United  
23 States in this action.  
24

25           d.    “Consent Decree” shall mean this Consent Decree and all plans  
26 approved pursuant to this Consent Decree.



1 e. "Court" shall mean the United States District Court for the  
2 Central District of California.

3 f. "Date of Lodging" shall mean the date on which this Consent  
4 Decree is filed with this Court.

5 g. "Day" or "Days" shall mean a calendar day or calendar days  
6 unless expressly stated to be a business day. In computing any period of time  
7 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or  
8 federal holiday, the period shall run to the close of business of the next business  
9 day.  
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11

12 h. "Effective Date" shall mean the date upon which this Consent  
13 Decree is entered by the Court or a motion to enter the Consent Decree is granted,  
14 whichever occurs first, as recorded on the Court's docket.

15 i. "EPA" shall mean the United States Environmental Protection  
16 Agency and any of its successor departments or agencies.  
17

18 j. "Facility" shall mean Anaplex's metal finishing facility located  
19 at 15547 Garfield Avenue, Paramount, California 90723.  
20

21 k. "Financial Information" means tax returns, balance sheets,  
22 financial statements, and bank records submitted by Defendants to EPA and the  
23 United States Department of Justice prior to the Effective Date of this Consent  
24 Decree.  
25  
26

1           l.        “Industrial User Permit” shall mean the permit governing  
2 discharges from the Facility to the LACSD POTW issued to Anaplex by LACSD  
3 on November 13, 2009, and any subsequent amendment, revision, or re-issuance.  
4

5           m.       “Interest” shall mean interest at the rate specified in 28 U.S.C.  
6 § 1961 as of the Effective Date.

7           n.        “LACSD POTW” shall mean the publicly-owned treatment  
8 works owned and operated by the Sanitation Districts of Los Angeles County.  
9

10          o.        “Paragraph” shall mean a portion of this Consent Decree  
11 identified by an Arabic numeral.

12          p.        “Parties” shall mean the United States and Anaplex.

13          q.        “Pretreatment Standards” shall mean the General Pretreatment  
14 Regulations found at 40 C.F.R. Part 403 and the Categorical Pretreatment  
15 Regulations for Metal Finishing Point Source Category found at 40 C.F.R. Part  
16 433.  
17

18          r.        “Publicly Owned Treatment Works” or “POTW” shall mean the  
19 Sanitation Districts of Los Angeles County, wastewater collection system and  
20 treatment plant.  
21

22          s.        “Rinse Water Use Assessment” shall mean the plan required to  
23 be prepared pursuant to Paragraph 39 (Rinse Water Use Assessment).  
24

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1 t. “Resource Conservation and Recovery Act” or “RCRA” shall  
2 mean the Solid Waste Disposal Act as amended and codified at 42 U.S.C. §§ 6401-  
3 6992k.  
4

5 u. “Section” shall mean a portion of this Consent Decree  
6 identified by a Roman numeral.

7 v. “United States” shall mean the United States of America, acting  
8 on behalf of EPA.  
9

10 17. Costs. The Parties shall bear their own costs of this action, including  
11 attorneys’ fees, except that the United States shall be entitled to collect their costs  
12 (including attorneys’ fees) incurred in any action necessary to collect any portion  
13 of the civil penalty or any stipulated penalties due but not paid by Anaplex in  
14 accordance with this Consent Decree.  
15

16 18. Notices.

17 a. Unless otherwise specified herein, whenever notifications,  
18 submissions, or communications are required by this Consent Decree, they shall be  
19 made in writing and either addressed as follows or sent via electronic mail to the  
20 email addresses provided below:  
21

22 To the United States (in addition to the EPA addresses below):

23 EES Case Management Unit  
24 Environment and Natural Resources Division  
25 U.S. Department of Justice  
26 Box 7611 Ben Franklin Station

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Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-10454  
Email: EESCCaseManagement.ENRD@usdoj.gov

To EPA:

Rebecca Sugerman  
Assistant Regional Counsel (ORC-3)  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
Phone: (415) 972-3893  
Email: sugerman.rebecca@epa.gov

and

Jim Polek  
Enforcement Officer (ENF-3-1)  
Enforcement Division  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
Phone: (415) 972-3185  
Email: polek.jim@epa.gov

To Anaplex:

Carmen Campbell  
Anaplex Corporation  
15547 Garfield Avenue  
Paramount, CA 90723  
Phone: (562) 634-5700  
Email: [anaplex@sbcglobal.net](mailto:anaplex@sbcglobal.net)

William Funderburk  
Anna Le May  
Castellon & Funderburk LLP  
811 Wilshire Blvd. Suite 1025  
Los Angeles, CA 90017  
Phone: (213) 623-7515

1 Email: [wfunderburk@candffirm.com](mailto:wfunderburk@candffirm.com)

2 Email: [alemay@candffirm.com](mailto:alemay@candffirm.com)

3 b. Any Party may, by written notice to the other Parties, change its  
4 designated notice recipient or notice address provided above. Notices submitted  
5 pursuant to this Paragraph shall be deemed submitted upon mailing or emailing,  
6 unless otherwise provided in this Consent Decree or by mutual agreement of the  
7 Parties in writing.  
8

9  
10 19. Modification.

11 a. The terms of this Consent Decree may be modified only by a  
12 subsequent written agreement signed by all the Parties.

13 b. Where the modification constitutes a material change to this  
14 Consent Decree, it shall be effective only upon approval by the Court.

15 c. Any disputes concerning modification of this Consent Decree  
16 shall be resolved pursuant to Section VIII (Dispute Resolution), provided,  
17 however, that, instead of the burden of proof provided by Paragraph 69 (Standard  
18 of Review), the Party seeking the modification bears the burden of demonstrating  
19 that it is entitled to the requested modification in accordance with Federal Rule of  
20 Civil Procedure 60(b).  
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20. Termination.

a. This Consent Decree may be terminated in accordance with the requirements of this Paragraph and Paragraph 21 if the following requirements are met:

- i. 912 days have elapsed since the Effective Date;
- ii. Anaplex has paid the civil penalty in Section III (Civil Penalty) and any accrued stipulated penalties pursuant to Section VI (Stipulated Penalties) as required by this Consent Decree;
- iii. Anaplex has maintained satisfactory compliance for at least the preceding 12 months with this Consent Decree;
- iv. There are no unresolved matters subject to Dispute Resolution pursuant to Section VIII (Dispute Resolution);
- v. No enforcement action under this Decree is pending; and
- vi. Anaplex has completed all of the requirements of Section IV (Compliance Requirements and Injunctive Relief) of this Consent Decree.

b. Alternatively if Anaplex ceases operations at the Facility without transferring the operation to another party, and Anaplex has paid the civil penalty in Section III (Civil Penalty) and any accrued

1 stipulated penalties pursuant to Section VI (Stipulated Penalties)  
2 as required by this Consent Decree, Anaplex may request  
3 termination pursuant to Paragraph 21.  
4

5 21. If Anaplex contends that the requirements of Paragraph 20 have been  
6 met, Anaplex may serve upon the United States in accordance with Paragraph 18  
7 (Notices) a request for termination, signed by an official of Anaplex, stating that  
8 Anaplex has satisfied those requirements, together with all necessary supporting  
9 documentation. The request for termination shall include the following  
10 certification:  
11

12 I certify under penalty of law that this document and all  
13 attachments were prepared under my direction or supervision in  
14 accordance with a system designed to assure that qualified  
15 personnel properly gather and evaluate the information  
16 submitted. Based on my inquiry of the person or persons who  
17 manage the system, or those persons directly responsible for  
18 gathering the information, the information submitted is, to the  
19 best of my knowledge and belief, true, accurate, and complete.  
20 I am aware that there are significant penalties for submitting  
false information, including the possibility of fine and  
imprisonment for knowing violations.

21 Following the United States' receipt of Anaplex's request for termination,  
22 the Parties shall confer informally concerning the request and any disagreement  
23 that the Parties may have as to whether Anaplex has complied with the  
24 requirements for termination of this Consent Decree. If the United States agrees  
25  
26

1 that the Consent Decree may be terminated, the Parties shall submit, for the  
2 Court's approval, a joint stipulation terminating the Consent Decree.

3  
4 22. Upon receipt of the notice from the United States that it does not  
5 agree that the Consent Decree may be terminated, Anaplex may invoke the dispute  
6 resolution procedures of Section VIII (Dispute Resolution).

7 23. Public Participation.

8  
9 a. This Consent Decree shall be lodged with the Court for a period  
10 of not less than thirty (30) Days for public notice and comment in accordance with  
11 28 C.F.R. § 50.7.

12  
13 b. The United States reserves the right to withdraw or withhold its  
14 consent if the comments regarding the Consent Decree disclose facts or  
15 considerations indicating that the Consent Decree is inappropriate, improper, or  
16 inadequate.

17  
18 c. Anaplex consents to entry of this Consent Decree without  
19 further notice and agrees not to withdraw from or oppose entry of this Consent  
20 Decree by the Court or to challenge any provision of the Consent Decree, unless  
21 the United States has notified Anaplex in writing that it no longer supports entry of  
22 the Consent Decree.

23  
24 24. Headings. Headings in this Consent Decree are provided for  
25 convenience only and shall not affect the substance of any provision.  
26



1           25.   Computation of Time. The computation of any period of time set  
2 forth in this Consent Decree shall be governed by Rule 6 of the Federal Rules of  
3 Civil Procedure. In computing any period of time under this Consent Decree,  
4 where the last Day would fall on a Saturday, Sunday, or Federal holiday, the period  
5 shall run until the close of business of the next business Day.  
6

7           26.   Signatories. Each undersigned representative of Anaplex and the  
8 Assistant Attorney General for the Environment and Natural Resources Division of  
9 the Department of Justice certifies that he or she is fully authorized to enter into the  
10 terms and conditions of this Consent Decree and to execute and legally bind the  
11 Party he or she represents to this document.  
12

13           27.   Counterparts. This Consent Decree may be signed in counterparts,  
14 and its validity shall not be challenged on that basis.  
15

16           28.   Service. With respect to all matters arising under or relating to this  
17 Consent Decree, Anaplex agrees to accept service of process by mail, in  
18 accordance with the notice provisions set forth in Paragraph 18 (Notices) and to  
19 waive the formal service requirements set forth in Rules 4 and 5 of the Federal  
20 Rules of Civil Procedure and any applicable Local Rules of this Court including,  
21 but not limited to, service of a summons. The Parties agree that Anaplex need not  
22 file a response to the Complaint in this action unless or until the Court expressly  
23 declines to enter this Consent Decree.  
24  
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26

1           29.   Integration. This Consent Decree constitutes the final, complete, and  
2 exclusive agreement and understanding among the Parties with respect to the  
3 settlement embodied in the Consent Decree and supersedes all prior agreements  
4 and understandings, whether oral or written, concerning the settlement embodied  
5 herein. Other than deliverables that are subsequently submitted and approved  
6 pursuant to this Consent Decree, no other document, nor any representation,  
7 inducement, agreement, understanding, or promise, constitutes any part of this  
8 Consent Decree or the settlement it represents, nor shall it be used in construing the  
9 terms of this Consent Decree.  
10  
11

12           30.   Final Judgment. Upon approval and entry of this Consent Decree by  
13 the Court, this Consent Decree shall constitute a final judgment of the Court as to  
14 the Parties.  
15

16           31.   Right of Entry. The United States and their representatives, including  
17 attorneys, contractors, and consultants, shall have the right of entry into the  
18 Facility, at all reasonable times, upon presentation of credentials, to:  
19

20           a.    monitor the progress of activities required under this Consent  
21 Decree;

22           b.    verify any data or information submitted to the United States in  
23 accordance with the terms of this Consent Decree;  
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1 c. obtain samples and, upon request, splits of any samples taken  
2 by Anaplex or its representatives, contractors, or consultants;

3 d. obtain documentary evidence, including photographs and  
4 similar data;

5 e. assess Anaplex's compliance with this Consent Decree; and

6 f. EPA agrees to provide Anaplex a copy of any document  
7 evidence taken by EPA for the purposes of evaluating compliance with this CD  
8 within fourteen business days of the site visit.  
9

10  
11 32. Split Samples.

12 a. EPA agrees to provide Anaplex with a split sample at time of  
13 collection. EPA also agrees to provide Anaplex with a copy of  
14 all laboratory reports within fourteen (14) days of the EPA's  
15 receipt.  
16

17 b. Upon prior written request by the EPA and pursuant to the Notice  
18 provisions contained in Paragraph 18, Anaplex shall provide  
19 EPA, the State, or their authorized representatives splits of any  
20 samples taken by Anaplex pursuant to this Consent Decree.  
21

22 33. Retention of Information.

23 a. Until five years after the termination of this Consent Decree,  
24 Anaplex shall retain, and shall instruct its contractors and agents to preserve, all  
25  
26

1 non-identical copies of all documents, records, or other information (including  
2 documents, records, or other information in electronic form) in its or its  
3 contractors' or agents' possession or control, or that come into its or its  
4 contractors' or agents' possession or control, and that relate in any manner to  
5 Anaplex's performance of its obligations under this Consent Decree, including but  
6 not limited to all records required by Section IV (Compliance Requirements and  
7 Injunctive Relief). This information-retention requirement shall apply regardless  
8 of any contrary corporate or institutional policies or procedures.  
9  
10

11           b. At any time during this information-retention period, upon  
12 written request by the United States, Anaplex shall provide copies of any  
13 documents, records, or other information required to be maintained under this  
14 Paragraph. Any records that are created electronically shall be preserved in their  
15 native format and produced in that format upon written request.  
16

17           c. At the conclusion of the information-retention period provided  
18 in this Paragraph, Anaplex shall notify EPA at least ninety (90) Days prior to the  
19 destruction of any documents, records, or other information subject to the  
20 requirements of the preceding Paragraph and, upon written request by the EPA or  
21 the State, Anaplex shall deliver any such documents, records, or other information  
22 to EPA or the State as requested.  
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1           d.       Anaplex may assert that certain documents, records, or other  
2 information is privileged under the attorney-client privilege or any other privilege,  
3 doctrine, or protection recognized by federal law. If Anaplex asserts such a  
4 privilege, doctrine, or protection, it shall provide the following: (1) the title of the  
5 document, record, or information; (2) the date of the document, record, or  
6 information; (3) the name and title of each author of the document, record, or  
7 information; (4) the name and title of each addressee and recipient; (5) a  
8 description of the subject of the document, record, or information; and (6) the  
9 privilege, doctrine, or protection asserted by Anaplex. However, no documents,  
10 records, or other information submitted to the United States or the EPA pursuant to  
11 or necessary to determine compliance with the requirements of this Consent  
12 Decree shall be withheld on grounds of privilege.  
13

14           e.       Anaplex may also assert that information required to be  
15 provided under this Section is protected as Confidential Business Information  
16 (“CBI”) under 40 C.F.R. Part 2. As to any information that Anaplex seeks to  
17 protect as CBI, Anaplex shall follow the procedures set forth in 40 C.F.R. Part 2.  
18

19           34.     Other Information Gathering Authorities. This Consent Decree in no  
20 way limits or affects any right of entry and inspection, or any right to obtain  
21 information, held by the United States pursuant to applicable federal law,  
22 regulations, or permits, nor does it limit or affect any duty or obligation of Anaplex  
23  
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1 to maintain documents, records, or other information imposed by applicable  
2 federal laws, regulations, or permits.

3  
4 **III. CIVIL PENALTY**

5       35. Civil Penalty. Anaplex shall pay the sum of ONE HUNDRED  
6 FORTY-TWO THOUSAND TWO HUNDRED DOLLARS (\$142,200) as a civil  
7 penalty, together with interest accruing from the Effective Date at the rate specified  
8 in 28 U.S.C. § 1961, until the penalty has been paid in full no later than 900 days  
9 following the Effective Date of this Consent Decree, pursuant to the following  
10 schedule of five payments: (i) within 30 days after the Effective Date of this  
11 Consent Decree, Anaplex shall make its first payment of \$28,440, plus accrued  
12 interest; (ii) within 365 Days after the Effective Date of this Consent Decree,  
13 Anaplex shall make its second payment of \$28,440, plus accrued interest; (iii)  
14 within 540 Days after the Effective Date of this Consent Decree, Anaplex shall  
15 make its third payment of \$28,440, plus accrued interest; (iv) within 720 Days after  
16 the Effective Date of this Consent Decree, Anaplex shall make its fourth payment  
17 of \$28,440, plus accrued interest; and (v) within 900 Days after the Effective Date  
18 of this Consent Decree, Anaplex shall make its last payment of \$28,440, plus  
19 accrued interest. Anaplex may make additional payments toward the outstanding  
20 obligation or may prepay the remaining outstanding obligation at any time. For  
21 each payment, Anaplex shall contact the Financial Litigation Unit of the United  
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1 States Attorney’s Office for the Central District of California (“FLU”) in advance  
2 for a determination regarding the amount of interest to be included with the  
3 payment.  
4

5 36. Payment of Civil Penalty to the United States. Anaplex shall pay the  
6 civil penalty and Interest due pursuant to Paragraph 35 (Civil Penalty) to the  
7 United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S.  
8 Department of Justice in accordance with written instructions to be provided to  
9 Anaplex after the Date of Lodging by the FLU. At the time of payment, Anaplex  
10 shall send a copy of the EFT authorization form and the EFT transaction record,  
11 together with a transmittal letter, which shall state that the payment is for the civil  
12 penalty owed pursuant to the Consent Decree in the above-captioned case, and  
13 shall reference the civil action number and DOJ case number 90-5-1-1-10454, to  
14 the United States in accordance Paragraph 18 (Notices); by email to  
15 [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:  
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19 US Environmental Protection Agency  
20 Fines and Penalties  
21 Cincinnati Finance Center  
22 26 Martin Luther King Drive  
23 Cincinnati, OH 45268

24 37. Tax Treatment. Anaplex shall not deduct any civil or stipulated  
25 penalties paid under this Consent Decree in calculating its federal or state income  
26 tax.

1 **IV. COMPLIANCE ACTIONS AND INJUNCTIVE RELIEF**

2 **A. Clean Water Act**

3 38. Compliance. Upon the Effective Date of this Consent Decree,  
4 Anaplex shall comply at the Facility with applicable pretreatment requirements and  
5 standards set forth in the Clean Water Act and Federal regulations promulgated  
6 thereunder.<sup>2</sup> In addition Anaplex shall comply with the reporting requirements  
7 detailed in Section V below.  
8

9 39. Rinse Water Use Assessment.

10 a. Anaplex shall complete a Rinse Water Use Assessment as  
11 described below. The Rinse Water Use Assessment shall be completed by a third-  
12 party certified professional engineer, experienced in the use of rinse water systems  
13 for the metal finishing industry.  
14

15 b. The purpose of the Rinse Water Use Assessment is to assess  
16 appropriate rinse water flow rates that maintain the quality of the parts. The Rinse  
17 Water Use Assessment shall, at a minimum, include:  
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19

20  
21  
22 <sup>2</sup> EPA may use Los Angeles County Sanitation District (LACSD) data at designated sampling point  
23 013078A, as specified in Anaplex's Industrial Waste Permit issued by the Los Angeles County Sanitation  
24 District, to determine compliance with this Consent Decree. LACSD may provide a split sample to Anaplex  
25 of any sample collected at sampling point 013078A if sufficient volume is available. If EPA uses other  
26 sources of data, EPA will allow Anaplex an opportunity to review the data before EPA uses it to determine  
noncompliance with this Decree.



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i. A work plan for a study to evaluate reducing rinse water flow rates, based on the recommendation from the GSI Environmental June 5, 2014 rinse water flow control technology review. Anaplex shall submit the work plan for EPA review and approval no later than thirty (30) Days after the Effective Date of the CD. The study shall assess how reducing flow rates affects the total dissolved solids (TDS) (or electrical conductivity (EC) as a surrogate measurement) of the rinse tanks, with the goal of documenting the amount flow rates can be decreased without adversely affecting product quality. The study shall determine, if it is not already known, the acceptable TDS level (or EC level) that should not be exceeded in order to preserve product quality. The work plan shall, at minimum, include:

1. Up-to-date tank schedule and tank layout. Indicate, by tank ID number, which tanks will be included in the study. An adequate number of tanks shall be evaluated to be representative of facility processes.
2. Step-by-step procedure by which Anaplex will collect TDS (or EC) measurements for a given flow rate and criteria by which Anaplex will determine acceptability of product quality.

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3. The type of equipment to be used (e.g. variable flow control valves, conductivity/TDS meters and probes, etc.) and schematic diagram showing where equipment will be installed.

4. A detailed schedule for conducting the study. The study shall be completed no later than sixty (60) Days after the approval of the work plan.

ii. A report summarizing the results of the study and conclusions drawn shall be submitted to EPA no later than ninety (90) days after study completion. The report shall include, at a minimum:

1. Description of any deviations from work plan procedures during the study.
2. Data from the study, including, but not limited to, the TDS (or EC) measurements for each flow.
3. Results of the study, including, but not limited to, the TDS (or EC) value at which product quality suffered or may suffer unacceptably.

iii. A Rinse Water Use Reduction Proposal, to be submitted for EPA review and approval concurrently with the report described in ¶ 39.b.ii above, which shall include, at a minimum:

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1. Options considered for reducing rinse water usage and the selected option(s), and reasons for selection of the option(s).
2. A proposed schedule for installation and/or implementation of the option(s) selected.

iv. Within thirty (30) Days after EPA approval of Anaplex's Rinse Water Use Reduction Proposal, Anaplex shall submit a plan, for EPA review and approval, for implementing the agreed-upon option(s) proposed in that proposal. The plan shall include recommended changes to be made to equipment and/or work procedures based on the results of the study conducted, so that rinse water flow rates can be optimized to reduce flow rates while maintaining product quality. The plan shall include a proposal for any specific equipment required to be installed (e.g., float valves to regulate fresh water to rinse tanks, automated conductivity controllers, or foot-pedal-activated spray rinse), and schematic diagrams showing where equipment will be installed. The plan shall also include a proposal for descriptions of required changes to work procedures, for example, use of spray rinse after immersion rinse. The plan shall specify the changes to be made to each tank, as applicable.

1 c. All proposed changes shall be completed no later than one (1)  
2 year after EPA's approval of the work plan required under Paragraph 39.b.i above.

3  
4 40. Rinse Water Use Installation.

5 a. Anaplex shall submit a notice of construction upon  
6 commencement of construction of any proposed changes.

7 b. Anaplex shall timely implement all of the proposed changes  
8 pursuant to the schedule contained in the Rinse Water Use Assessment as reviewed  
9 and approved by EPA.

10 c. Once implemented, Anaplex shall submit a notice of  
11 completion of any changes to EPA pursuant to Paragraph 18 (Notices).

12  
13 41. Monitoring of Wastewater Discharges. Anaplex shall conduct the  
14 following monitoring of any wastewater discharges from the Facility to the  
15 LACSD POTW:

16  
17 a. From the Effective Date until the termination of this consent  
18 decree, except as noted in Paragraph 41.a.v. below, Anaplex shall perform self-  
19 monitoring as follows:

20  
21 i. ONCE EVERY MONTH, Anaplex shall self-monitor the  
22 process-related wastewater discharges to the sewers for discharge flowrate,  
23 cadmium, chromium, copper, lead, nickel, silver, zinc, and total cyanide;  
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ii. CONTINUOUSLY during hours of operation, Anaplex shall self-monitor the process-related wastewater discharges to the sewers for pH.

iii. pH Self-Monitoring Summaries: ONCE EACH MONTH, for one year following the Effective Date, Anaplex shall prepare summaries of the pH self-monitoring for compliance sample point 013078A as follows:

1. The number of minutes each day in which the pH is below 2.0;
2. The number of minutes each day in which the pH is below 5.0;
3. The number of minutes each day in which the pH is below 6.0;
4. The number of minutes each day in which the pH is above 12.5.

iv. Anaplex shall self-monitor and analyze the process-related wastewater using the sampling protocols listed below and the EPA-approved analytical methods (or equivalent) necessary to achieve detection limits no greater than those indicated below:

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<b>Parameters</b>	<b>Sampling Protocols</b>	<b>Detection Limits no greater than:</b>
Cadmium	24-hour composite*	15 µg/l
Chromium	24-hour composite*	10 µg/l
Copper	24-hour composite*	10 µg/l
Lead	24-hour composite*	20 µg/l
Nickel	24-hour composite*	10 µg/l
Silver	24-hour composite*	10 µg/l
Zinc	24-hour composite*	10 µg/l
Cyanide	Grab	10 µg/l
Discharge flowrate	Unspecified	

v. Anaplex shall initiate self-monitoring required in this Paragraph 41 within seven (7) Days of the Effective Date of the Consent Decree.

b. For two months following the completion of the system changes made pursuant to Paragraph 40, Anaplex shall WEEKLY self-monitor the process-related wastewater discharges to the sewers for discharge flowrate, cadmium, chromium, copper, lead, nickel, silver, zinc, and total cyanide. After two months, the frequency will return to monthly sampling for these constituents as set out in Paragraph 41.a.

c. The samples shall be taken when the Facility is conducting normal operations and the samples shall be representative of the wastewater being

1 discharged from the Facility to the LACSD POTW on that particular Day. The  
2 monitoring results shall be submitted to EPA pursuant to Paragraph 18 (Notices).  
3  
4 The samples shall be taken in order to determine compliance with the pretreatment  
5 standards at 40 C.F.R. § 433.17.

6 d. Anaplex shall also comply with all other monitoring  
7 requirements contained in the Clean Water Act and associated Federal regulations  
8 and all other monitoring requirements contained in its Industrial User Permit issued  
9  
10 by the LACSD.

11 **B. Resource Conservation and Recovery Act**

12 42. Anaplex shall comply with RCRA's implementing regulations set  
13 forth in 22 C.C.R. Title 22, Division 20 (*see also* 40 C.F.R. §§ 262.11,  
14 262.34(a)(1), 262.34(a)(2), and 270.1(c)).

15  
16 a. Within 60 days of the Effective Date Anaplex shall submit to  
17 EPA for EPA's review and approval an operating plan for how the Facility will  
18 manage, and minimize potential releases of, hazardous materials to or from  
19 secondary containment and into the environment.  
20

21 b. The operating plan shall include procedures requiring that any  
22 waste, including plating solution, spilled on the floor or secondary containment is  
23 cleaned up within twenty-four (24) hours of the spill.  
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1 c. Anaplex shall implement the operating plan within fourteen  
2 (14) days of EPA approval.

3  
4 43. Ongoing Compliance

5 a. Anaplex shall comply with the reporting requirements of  
6 Section V below to demonstrate ongoing compliance with RCRA for two years  
7 after the Effective Date of this Consent Decree.

8  
9 b. Within sixty (60) Days after the Effective Date of this Consent  
10 Decree, Anaplex shall submit waste determinations, as required by 22 CCR  
11 § 66262.11 (*see also* 40 C.F.R. § 262.11), for each potentially hazardous waste  
12 currently generated at the Facility.

13  
14 V. APPROVAL AND IMPLEMENTATION OF PLANS, PERMITS AND  
15 REPORTING

16 44. Approval of Deliverables.

17 a. After review of any plan, report, or other item that Anaplex is  
18 required to submit pursuant to this Consent Decree, EPA shall, in writing:

19 (i) approve the submission; (ii) approve the submission upon specified conditions;  
20 (iii) approve part of the submission and disapprove the remainder; or (iv)  
21 disapprove the submission.  
22

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1           b.     If EPA approves the submission, Anaplex shall take all actions  
2 required by the plan, report, or other item, in accordance with the schedules and  
3 requirements of the plan, report, or other item, as approved.  
4

5           c.     If EPA conditionally approves the submission or approves the  
6 submission only in part, Anaplex shall, upon written direction from EPA, take all  
7 actions required by the approved plan, report, or other item that EPA determines  
8 are technically severable from any disapproved portions, subject to Anaplex's right  
9 to dispute only the specified conditions or the disapproved portions, under Section  
10 VIII (Dispute Resolution).  
11

12           d.     If the submission is disapproved in whole or in part:

13                   i.     Anaplex and the EPA shall meet and confer and discuss  
14 the deficiencies. Thereafter, Anaplex shall, within thirty (30) Days or such  
15 other time as the Parties agree to in writing, correct all deficiencies and  
16 resubmit the plan, report, or other item, or disapproved portion thereof, for  
17 approval, in accordance with Paragraph 44. If the resubmission is approved  
18 in whole or in part, Anaplex shall take all actions required by the plan,  
19 report, or other item, in accordance with the schedules and requirements of  
20 the plan, report, or other item, as approved.  
21

22                   ii.     Any stipulated penalties applicable to the original  
23 submission, as provided in Section VI (Stipulated Penalties), shall accrue  
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1 during the thirty (30) Day period or other specified period. Notwithstanding  
2 the preceding sentence, if EPA determines the original submission was so  
3 deficient as to constitute a material breach of Anaplex's obligations under  
4 this Consent Decree, the stipulated penalties applicable to the original  
5 submission shall be due and payable notwithstanding any subsequent  
6 resubmission, upon demand by EPA.  
7

8  
9 iii. If a resubmitted plan, report, or other item, or portion thereof, is  
10 disapproved in whole or in part, EPA may again direct Anaplex to correct  
11 any deficiencies, in accordance with the preceding subparagraphs, or may  
12 itself correct any deficiencies, subject to Anaplex's right to invoke Dispute  
13 Resolution under Section VIII and the right of EPA to seek stipulated  
14 penalties.  
15

16 45. Permits. Where any obligation under this Consent Decree requires  
17 Anaplex to obtain a federal, state, or local permit or approval, Anaplex shall  
18 submit to the appropriate agency timely and complete applications and take all  
19 other actions necessary to obtain all such permits or approvals. Anaplex may seek  
20 relief under the provisions of Section VII (Force Majeure) for any delay in the  
21 performance of any such obligation resulting from a failure to obtain, or a delay in  
22 obtaining, any permit or approval required to fulfill such obligation, if Anaplex has  
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1 submitted timely and complete applications and has taken all other actions  
2 necessary to obtain all such permits or approvals.

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4 46. Quarterly Reports. No later than forty-five (45) Days after the end of  
5 each calendar-year quarter (*i.e.*, by May 15, August 15, November 15, and  
6 February 15) after the Effective Date, Anaplex shall submit a report for the  
7 preceding quarter to the United States and EPA in accordance with Paragraph 18  
8 (Notices). Unless specified otherwise in this Consent Decree, each report shall  
9 include, at a minimum:  
10

11 a. A written summary of all activities undertaken during the  
12 preceding quarter pursuant to this Consent Decree related to the Rinsewater Use  
13 Assessment and Rinsewater Use Installation described in Paragraphs 39 and 40;

14  
15 b. A written summary of any discharges to the LACSD POTW  
16 during the preceding quarter that exceeded the pretreatment standards contained in  
17 40 C.F.R. § 433.17 or its local permit from LACSD;

18  
19 c. Copies of hazardous waste manifests for hazardous waste  
20 shipped offsite for the previous four months;

21 d. Photographs, taken at the first of each month, demonstrating  
22 that no liquids are accumulating in secondary containment for the previous four  
23 months;  
24

1 e. Photographs, taken at the first of each month, documenting that  
2 wastes stored in the Hazardous Waste Storage Area meet the requirements set out  
3 at 22 CCR 66262.34 (*see also* 40 C.F.R. § 262.34);  
4

5 f. A description of any non-compliance with the requirements of  
6 this Consent Decree during the preceding quarter and an explanation of the likely  
7 cause of the non-compliance and of the remedial steps taken, or to be taken, to  
8 prevent or minimize such non-compliance.  
9

10 47. Additional Reporting. Whenever any violation of this Consent Decree  
11 or any other event affecting Anaplex's or its Facility's performance under this  
12 Consent Decree, may pose an immediate threat to the public health or welfare or  
13 the environment, Anaplex shall notify EPA orally or by electronic transmission as  
14 soon as possible, but no later than twenty-four (24) hours after Anaplex first knew  
15 of the violation or event. Nothing in this Paragraph relieves Anaplex of its  
16 obligation to provide the notice required by Section VII (Force Majeure).  
17

18 48. Certification of Reports. Each report submitted by Anaplex to EPA  
19 under Section V (Approval and Implementation of Plans, Permits and Reporting)  
20 shall be signed by an official of Anaplex and include the following certification:  
21

22 I certify under penalty of law that this document and all  
23 attachments were prepared under my direction or supervision in  
24 accordance with a system designed to assure that qualified  
25 personnel properly gather and evaluate the information  
26 submitted. Based on my inquiry of the person or persons who

1 manage the system, or those persons directly responsible for  
2 gathering the information, the information submitted is, to the  
3 best of my knowledge and belief, true, accurate, and complete.  
4 I am aware that there are significant penalties for submitting  
5 false information, including the possibility of fine and  
imprisonment for knowing violations.

6 This certification requirement does not apply to emergency or similar  
7 notifications where compliance would be impracticable.

8  
9 49. Effect on Other Reporting Requirements. The reporting requirements  
10 of this Consent Decree do not relieve Anaplex of any reporting obligations  
11 required by the Clean Water Act and Resource Conservation and Recovery Act or  
12 implementing regulations, or by any other federal, state, or local law, regulation,  
13 permit, or other requirement.

14  
15 50. Use of Reports. Any information provided pursuant to this Consent  
16 Decree may be used by the United States in any proceeding to enforce the  
17 provisions of this Consent Decree and as otherwise permitted by law.

18  
19 VI. STIPULATED PENALTIES

20 51. Stipulated Penalties. Anaplex shall be liable for stipulated penalties to  
21 the United States for violations of this Consent Decree as specified below, unless  
22 excused under Section VII (Force Majeure), including any work plan or schedule  
23 approved under this Consent Decree, according to all applicable requirements of  
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1 this Consent Decree and within the specified time schedules established by or  
 2 approved under this Consent Decree, upon demand by EPA.

3  
 4 52. Late Payment of Civil Penalty. If Anaplex fails to pay the civil  
 5 penalty required to be paid under Section III (Civil Penalty) when due, Anaplex  
 6 shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is  
 7 late.

8  
 9 53. Compliance Actions and Deliverable Requirements. The following  
 10 stipulated penalties shall accrue per violation per Day for each violation of the  
 11 requirements of Paragraphs 38-43 (except for violations of federal pretreatment  
 12 standards, as those are addressed through stipulated penalties in Paragraph 54) and  
 13 for each failure to timely submit, modify, or implement, as approved, the reports  
 14 plans, studies, analyses, protocols, or other deliverables required by this Consent  
 15 Decree:  
 16

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1,000	15th through 30th Day
\$1,500	31st Day and beyond

1           54.    Pretreatment Standards. For each violation of the federal pretreatment  
2 standards at 40 C.F.R. § 433.17 (*see also* Paragraph 38 (Compliance)) Anaplex  
3 shall pay \$500 per violation per day.  
4

5           55.    Accrual of Stipulated Penalties. Stipulated penalties under this  
6 Section shall begin to accrue on the Day after performance is due or on the Day a  
7 violation occurs, whichever is applicable, and shall continue to accrue until  
8 performance is satisfactorily completed or until the violation ceases, but need not  
9 be paid until a demand is made. Stipulated penalties shall accrue simultaneously  
10 for separate violations of this Consent Decree.  
11

12           56.    Waiver of Stipulated Penalties. The United States may, in the  
13 unreviewable exercise of its discretion, reduce or waive Stipulated Penalties  
14 otherwise due under this CD.  
15

16           57.    Payment of Stipulated Penalties. Anaplex shall pay any stipulated  
17 penalty within sixty (60) Days of receiving the United States' written demand,  
18 except as described below in Paragraph 58, Effect of Dispute Resolution. Anaplex  
19 shall pay the stipulated penalties to the United States in the manner set forth and  
20 with the confirmation notices required by Paragraph 36 (Payment of Civil Penalty  
21 to the United States), except that the transmittal letter shall state that the payment is  
22 for stipulated penalties and shall state for which violation(s) the penalties are being  
23 paid.  
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1           58. Effect of Dispute Resolution. Stipulated penalties shall continue to  
2 accrue as provided in Paragraph 55 (Accrual of Stipulated Penalties), during any  
3 Dispute Resolution, but need not be paid until the following:  
4

5           a. If the dispute is resolved by agreement or by a decision of EPA  
6 pursuant to Paragraph 67 (Formal Dispute Resolution) that is not appealed to the  
7 Court, Anaplex shall pay accrued penalties determined to be owing pursuant to that  
8 agreement or decision, together with Interest, to the United States, in accordance  
9 with Paragraph 36, within sixty (60) Days of the effective date of the agreement  
10 resolving the dispute or the receipt of EPA's decision or order.  
11

12           b. If the dispute is appealed to the Court and the United States  
13 prevails in whole or in part, Anaplex shall pay all accrued penalties determined by  
14 the Court to be owing, together with Interest, within sixty (60) Days of receiving  
15 the Court's decision or order.  
16

17           c. If any Party appeals the Court's decision, Anaplex shall pay all  
18 accrued penalties determined by the appellate court or the Court on remand to be  
19 owing, together with Interest, no more than sixty (60) Days of receiving the final  
20 appellate court decision.  
21

22           59. Interest on Unpaid Stipulated Penalties. If Anaplex fails to pay  
23 stipulated penalties according to the terms of this Consent Decree, Anaplex shall  
24 be liable for Interest on such penalties, accruing as of the date payment became  
25  
26



1 due. Nothing in this Paragraph shall be construed to limit the United States from  
2 seeking any remedy otherwise provided by law for Anaplex's failure to pay any  
3 stipulated penalties.  
4

5 60. Reservation of Other Remedies. Subject to the provisions of Section  
6 IX (Effect of Settlement/Reservation of Rights), the stipulated penalties provided  
7 for in this Consent Decree shall be in addition to any other rights, remedies, or  
8 sanctions available to the United States for Anaplex's violation of this Consent  
9 Decree or applicable law. Where a violation of this Consent Decree is also a  
10 violation of statutory or regulatory requirements, Anaplex shall be allowed a credit,  
11 for any stipulated penalties paid, against any statutory penalties imposed for such  
12 violation.  
13  
14

15 VII. FORCE MAJEURE

16 61. Definition of Force Majeure. Force Majeure, for purposes of this  
17 Consent Decree, is defined as any event arising from causes beyond the control of  
18 Anaplex, of any entity controlled by Anaplex, or of Anaplex's officers, employees,  
19 agents, consultants or contractors, that delays or prevents the performance of any  
20 obligation under this Consent Decree despite Anaplex's best efforts to fulfill the  
21 obligation. The requirement that Anaplex exercise best efforts to fulfill the  
22 obligation includes using best efforts to anticipate any potential Force Majeure  
23 obligation includes using best efforts to anticipate any potential Force Majeure  
24 event and best efforts to address the effects of any such event (a) as it is occurring  
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26

1 and (b) after it has occurred to prevent or minimize any resulting delay to the  
2 greatest extent possible. “Force Majeure” does not include Anaplex’s financial  
3 inability to perform any obligation under this Consent Decree.  
4

5 62. Notification Requirements. If any event occurs or has occurred that  
6 may delay the performance of any obligation under this Consent Decree, whether  
7 or not caused by a Force Majeure event, Anaplex shall provide notice orally or by  
8 electronic transmission to EPA within seventy-two (72) hours of when Anaplex  
9 first knew that the event might cause a delay. Within seven (7) Days thereafter,  
10 Anaplex shall provide in writing to EPA an explanation and description of the  
11 reasons for the delay; the anticipated duration of the delay; the actions taken or to  
12 be taken to prevent or minimize the delay; a schedule for implementation of any  
13 measures to be taken to prevent or mitigate the delay or the effect of the delay;  
14 Anaplex’s rationale for attributing such delay to a Force Majeure event if it intends  
15 to assert such a claim; and a statement as to whether, in the opinion of Anaplex,  
16 such event may cause or contribute to an endangerment to public health, welfare or  
17 the environment. Anaplex shall include with any notice all available  
18 documentation supporting the claim that the delay was attributable to a Force  
19 Majeure. Failure to comply with the above requirements shall preclude Anaplex  
20 from asserting any claim of Force Majeure for that event for the period of time of  
21 such failure to comply, and for any additional delay caused by such failure.  
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1 Anaplex shall be deemed to know of any circumstance of which Anaplex, any  
2 entity controlled by Anaplex, or Anaplex's contractors knew or should have  
3 known.  
4

5 63. Effect of Force Majeure.

6 a. If EPA agrees that the delay or anticipated delay is attributable  
7 to a Force Majeure event, the time for performance of the obligations under this  
8 Consent Decree that are affected by the Force Majeure event will be extended by  
9 EPA for such time as is necessary to complete those obligations. An extension of  
10 the time for performance of the obligations affected by the Force Majeure event  
11 shall not, of itself, extend the time for performance of any other obligation. EPA  
12 will notify Anaplex in writing of the length of the extension, if any, for  
13 performance of the obligations affected by the Force Majeure event.  
14  
15

16 b. If EPA does not agree that the delay or anticipated delay has  
17 been or will be caused by a Force Majeure event, EPA will notify Anaplex in  
18 writing of its decision.  
19

20 64. Invocation of Dispute Resolution. If Anaplex elects to invoke the  
21 dispute resolution procedures set forth in Section VIII (Dispute Resolution), it shall  
22 do so no later than fifteen (15) business Days after receipt of EPA's written notice.  
23 In any such proceeding, Anaplex shall have the burden of demonstrating by a  
24 preponderance of the evidence that the delay or anticipated delay has been or will  
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1 be caused by a Force Majeure event, that the duration of the delay or the extension  
2 sought was or will be warranted under the circumstances, that best efforts were  
3 exercised to avoid and mitigate the effects of the delay, and that Anaplex complied  
4 with the requirements of Paragraphs 61 (Definition of Force Majeure) and 62  
5 (Notification Requirements). If Anaplex carries this burden, the delay at issue  
6 shall be deemed not to be a violation by Anaplex of the affected obligation of this  
7 Consent Decree identified to the United States, EPA, and if applicable, the Court.  
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10 VIII. DISPUTE RESOLUTION

11 65. Exclusivity of Procedure. Unless otherwise expressly provided for in  
12 this Consent Decree, the dispute resolution procedures of this Section shall be the  
13 exclusive mechanism to resolve disputes arising under or with respect to this  
14 Consent Decree. The procedures set forth in this Section shall not apply to actions  
15 by the United States to enforce obligations of Anaplex that have not been disputed  
16 in accordance with this Section. Anaplex's failure to seek resolution of a dispute  
17 under this shall preclude Anaplex from raising any such issue as a defense to an  
18 action by the United States to enforce any obligation of Anaplex arising under this  
19 Consent Decree.  
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22 66. Informal Dispute Resolution. Any dispute subject to Dispute  
23 Resolution under this Consent Decree shall first be the subject of informal  
24 negotiations. The dispute shall be considered to have arisen when Anaplex sends  
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1 the United States a written Notice of Dispute. Such Notice of Dispute shall state  
2 clearly the matter in dispute. The period of informal negotiations shall not exceed  
3 forty (40) business Days from the date the dispute arises, unless that period is  
4 modified by written agreement of all Parties. If the Parties cannot resolve a dispute  
5 by informal negotiations, then the position advanced by the United States shall be  
6 considered binding unless, within thirty (30) business Days after the conclusion of  
7 the informal negotiation period, Anaplex invokes formal dispute resolution  
8 procedures as set forth below.

11 67. Formal Dispute Resolution.

12 a. Anaplex shall invoke formal dispute resolution procedures,  
13 within the time period provided in Paragraph 66 (Informal Dispute Resolution), by  
14 serving on the United States a written Statement of Position regarding the matter in  
15 dispute. The Statement of Position shall include, but need not be limited to, any  
16 factual data, analysis, or opinion supporting Anaplex's position and any supporting  
17 documentation relied upon by Anaplex.

20 b. The United States shall serve its Statement of Position within  
21 forty-five (45) Days of receipt of Anaplex's Statement of Position. The United  
22 States' Statement of Position shall include, but need not be limited to, any factual  
23 data, analysis, or opinion supporting that position and any supporting  
24 documentation relied upon by the United States. The United States' Statement of  
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1 Position shall be binding on Anaplex, unless Anaplex files a motion, within forty-  
2 five (45) Days of receiving the United States' Statement of Position, requesting  
3 judicial review of the dispute in accordance with the following Paragraph.  
4

5 68. Judicial Review

6 a. Anaplex may seek judicial review of the dispute by filing with  
7 the Court and serving on the United States in accordance with Paragraph 18  
8 (Notices), a motion requesting judicial resolution of the dispute. The motion must  
9 be filed within twenty (20) Days of receipt of the United States' Statement of  
10 Position pursuant to Paragraph 67 (Formal Dispute Resolution). The motion shall  
11 contain a written statement of Anaplex's position on the matter in dispute,  
12 including any supporting factual data, analysis, opinion, or documentation, and  
13 shall set forth the relief requested and any schedule within which the dispute must  
14 be resolved for orderly implementation of the Consent Decree.  
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17 b. The United States shall respond to Anaplex's motion within the  
18 time period allowed by the Local Rules of this Court. Anaplex may file a reply  
19 memorandum, to the extent permitted by the Local Rules. Anaplex may not seek  
20 judicial review of any issue not raised in informal and formal Dispute Resolution  
21 under Paragraphs 66 and 67.  
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1           69.    Standard of Review

2                   a.       Except as otherwise provided in this Consent Decree, in any  
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4 dispute brought under this Section pertaining to EPA’s determination regarding the  
5 adequacy or appropriateness of plans, procedures to implement plans, schedules or  
6 any other items requiring approval by EPA under this Consent Decree; the  
7 adequacy of the performance of work undertaken pursuant to this Consent Decree;  
8 and all other disputes that are accorded review on the administrative record under  
9 applicable principles of administrative law, Anaplex shall have the burden of  
10 demonstrating, based on the administrative record, that the position of the United  
11 States is arbitrary and capricious or otherwise not in accordance with law.  
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14                   b.       Except as otherwise provided in this Consent Decree, in any  
15 other dispute brought under this Section, Anaplex shall bear the burden of  
16 demonstrating that its position complies with this Consent Decree and furthers the  
17 Objectives of the Consent Decree.  
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19           70.    Effect of Dispute Resolution on Deadlines. The invocation of dispute  
20 resolution procedures under this Section VIII (Dispute Resolution) shall not, by  
21 itself, extend, postpone, or affect in any way any obligation of Anaplex under this  
22 Consent Decree, unless and until final resolution of the dispute so provides.  
23 Stipulated penalties with respect to the disputed matter shall continue to accrue  
24 from the Day after performance is due or on the first Day of noncompliance,  
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1 whichever is applicable, but payment shall be stayed pending resolution of the  
2 dispute. If Anaplex does not prevail on the disputed issue, stipulated penalties  
3 shall be assessed and paid as provided in Section VI (Stipulated Penalties). If  
4 Anaplex prevails, any stipulated penalties owed shall be paid in accordance with  
5 the final resolution.  
6

7 **IX. FINANCIAL CERTIFICATION**

8  
9 71. Anaplex hereby certifies, to the best of its knowledge and belief, after  
10 thorough inquiry, (a) that it has submitted to the United States Financial  
11 Information that fairly, accurately, and materially sets forth its financial  
12 circumstances; (b) that those circumstances have not materially changed between  
13 the time the Financial Information was submitted to the United States and the time  
14 Anaplex executed this Consent Decree; and (c) that it has fully disclosed the  
15 existence of any insurance policies that may cover any payment of a civil penalty  
16 relating to this matter.  
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19 **X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

20 72. Effect of Settlement. This Consent Decree resolves the civil claims of  
21 the United States for the specific violations alleged in the Complaint filed in this  
22 action through the Date of Lodging.  
23

24 73. Reservation of Rights. The United States reserves all legal and  
25 equitable remedies available to enforce the provisions of this Consent Decree,  
26



1 except as expressly stated in Paragraph 72 (Effect of Settlement). This Consent  
2 Decree shall not be construed to limit the rights of the United States to obtain  
3 penalties or injunctive relief under the Clean Water Act and the Resource  
4 Conservation and Recovery Act or the implementing regulations, or under other  
5 federal or state laws, regulations, or permit conditions, except as expressly  
6 specified in Paragraph 72 (Effect of Settlement). The United States further  
7 reserves all legal and equitable remedies to address any imminent and substantial  
8 endangerment to the public health or welfare or the environment arising at, or  
9 posed by, Anaplex's Facility, whether related to the violations addressed in this  
10 Consent Decree or otherwise.

13  
14 74. Waiver of Certain Defenses. In any subsequent administrative or  
15 judicial proceeding initiated by the United States for injunctive relief, civil  
16 penalties, other appropriate relief relating to the Facility, Anaplex shall not assert,  
17 and may not maintain, any defense or claim based upon the principles of waiver,  
18 res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting,  
19 or other defenses based upon any contention that the claims raised by the United  
20 States in the subsequent proceeding were or should have been brought in the  
21 instant case, except with respect to claims that have been specifically resolved  
22 pursuant to Paragraph 72 (Effect of Settlement).

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1           75.    Limitations on Effect of Decree.

2                   a.       This Consent Decree is not a permit, or a modification of any  
3 permit, under any federal, State, or local laws or regulations. Anaplex is  
4 responsible for achieving and maintaining complete compliance with all applicable  
5 federal, State, and local laws, regulations, and permits; and Anaplex’s compliance  
6 with this Consent Decree shall be no defense to any action commenced pursuant to  
7 any such laws, regulations, or permits, except as set forth herein. The United  
8 States does not, by their consent to the entry of this Consent Decree, warrant or  
9 aver in any manner that Anaplex’s compliance with any aspect of this Consent  
10 Decree will result in compliance with provisions of the Clean Water Act and the  
11 Resource Conservation and Recovery Act or with any other provisions of federal,  
12 State, or local laws, regulations, or permits.

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16                   b.       This Consent Decree does not limit or affect the rights of  
17 Anaplex or of the United States against any third parties, not party to this Consent  
18 Decree, nor does it limit the rights of third parties, not party to this Consent  
19 Decree, against Anaplex, except as otherwise provided by law.

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c. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

Dated and entered this \_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
Central District of California

1 WE HEREBY CONSENT to the entry of the Consent Decree in United States v.  
2 Anaplex Corporation, subject to the public comment requirements of 28 C.F.R. §  
3 50.7.

4 **FOR THE UNITED STATES OF AMERICA**

5  
6  
7  
8 5/11/15  
Date

  
\_\_\_\_\_

9 ELLEN MAHAN  
10 Deputy Chief  
11 Environmental Enforcement Section  
12 U.S. Department of Justice

11 5/11/15  
12 Date

  
\_\_\_\_\_


13 ELIAS L. QUINN  
14 Environmental Enforcement Section  
15 U.S. Department of Justice  
16 P.O. Box 7611  
17 Ben Franklin Station  
18 Washington, D.C. 20044-7611

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Attorneys for Plaintiff, United States of America


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WE HEREBY CONSENT to the entry of the Consent Decree in United States v. Anaplex Corporation, subject to the public comment requirements of 28 C.F.R. § 50.7.

4/29/15  
Date

  
JARED BLUMENFELD  
Regional Administrator, Region 9  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105


4/23/15  
Date

  
REBECCA SUGERMAN  
Assistant Regional Counsel, Region 9  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

1 WE HEREBY CONSENT to the entry of the Consent Decree in United States v.  
2 Anaplex Corporation.

3 FOR ANAPLEX:  
4

5  
6 4/21/15  
7 Date

  
CARMEN CAMPBELL  
President  
Anaplex Corporation  
15547 Garfield Avenue  
Paramount, CA 90723

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