

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

J.J.W. Metal Corp.,

Debtor.

Case No. 20-04536-EAG11

Chapter 11

SETTLEMENT AGREEMENT

WHEREAS, J.J.W. Metal Corp. (“Debtor”) filed with the United States Bankruptcy Court for the District of Puerto Rico a voluntary petition for relief under Title 11 of the United States Code (the “Bankruptcy Code”) on November 23, 2020, which has been administered as *In re: J.J.W. Metal Corp.*, Case No. 20-04536-EAG11.

WHEREAS, on September 24, 2021, the United States, on behalf of the United States Environmental Protection Agency (“EPA”), filed a proof of claim, in the amount of \$492,944.27 (the “EPA Proof of Claim”), contending that the Debtor is liable under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9601-9675, for costs incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with the JJW Metal Recycling Fire Superfund Site located at 756 Los Colobos Street, Carolina, Puerto Rico (the “Site”);

WHEREAS, the EPA Proof of Claim asserts that the aforementioned response cost liability is a general unsecured claim;

WHEREAS, on December 24, 2021, Debtor filed an objection to the EPA Claim;

WHEREAS, on January 31, 2022, the Court confirmed the Third Amended Plan of Reorganization filed by the Debtor on October 27, 2021 as supplemented on January 13, 2022 (the “Plan”);

WHEREAS, the Plan provides that general unsecured claims in excess of \$20,000, other than insider claims, shall be paid in 60 equal monthly installments at an interest rate of 4.5%;

WHEREAS, the Debtor, starting on January 31, 2022, began making monthly payments to EPA in the amount of \$9,189.97, under the Plan, based on the \$492,944.27 amount in the EPA Proof of Claim;

WHEREAS, the Debtor made these monthly \$9,189.97 payments by mailing a check in the amount of \$9,189.97 to the United States on or about January 31, 2022, February 4, 2022, March 4, 2022, April 4, 2022, May 4, 2022, June 4, 2022, July 29, 2022, and August 4, 2022, for a total of \$73,519.76;

WHEREAS, the Debtor and EPA (the “Parties”) have agreed to a settlement concerning the EPA Proof of Claim and the Debtor’s objection to said claim and wish to resolve their differences with respect to said claim as provided herein;

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the Parties by their attorneys and authorized officials, it is hereby agreed as follows:

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

2. With respect to the Site, the United States, on behalf of EPA, shall have an allowed claim of \$300,000 (the “EPA Allowed Claim”), to be paid as a Class 6 allowed general unsecured claim pursuant to the terms of the Plan. In order to satisfy the EPA Allowed Claim, Debtor shall continue to make monthly payments under the Plan in the amount of \$9,189.97, by the fourth day of each month, until such time as the Court approves this Settlement Agreement. After the date of the Court’s approval of this Settlement Agreement (the “Effective Date”), the amount of the monthly payments for the remainder of the 60 monthly payments shall be calculated based on amortizing the then-outstanding principal amount over the remaining payments at 4.5% interest. If there is a deferral of the monthly payments pursuant to Article V of the Plan, the amount of the monthly payments for the remainder of the 60 monthly payments, commencing after the deferral period, shall be calculated based on amortizing the then-outstanding principal amount, which shall include the interest accrued during the deferral period, over the remaining payments at 4.5% interest. If the case is converted to Chapter 7, EPA shall have an allowed general unsecured claim in the amount of \$300,000, minus the total of the monthly payments made to EPA under the Plan (other than the amount of such payments attributable to interest).

3. Only the amount of cash received by EPA, and not the total amount of the EPA Allowed Claim, shall be credited as a recovery by EPA for the Site, which credit

shall reduce the liability of the potentially responsible parties at the Site, other than the Debtor, by the amount of the credit.

4. Payment to the United States shall be made by FedWire Electronic Funds Transfer in accordance with instructions, to be provided to the Debtor by the Financial Litigation Unit of the United States Attorney's Office for the District of Puerto Rico which will included a Consolidated Debt Collection System ("CDCS") reference number. At the time of any distribution pursuant to this Settlement Agreement, the Debtor shall transmit written confirmation of such distribution to the United States at the physical and email addresses specified below, and email confirmation of such distribution to the EPA Cincinnati Finance Office at cinwd_acctsreceivable@epa.gov, with a reference to *In re: J.J.W. Metal Corp.*, Case Number 20-04536-EAG11 (Bankr. D.P.R.), the CDCS number, and Site/Spill ID Number A28V:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
Ref. DOJ File No. 90-11-3-12537

Walter Sainsbury
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
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5. In consideration of the distributions that will be made under the terms of this Settlement Agreement, and except as specifically provided in Paragraphs 6-8, EPA covenants not to file a civil action or take administrative action against the Debtor

pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Site.

6. The covenant set forth in Paragraph 5 extends only to the Debtor and does not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant for any person or entity other than the Debtor and the United States. EPA and the Debtor expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, that they may have against all other persons, firms, corporations, entities, or predecessors of the Debtor for any matter arising at or relating in any manner to the Site. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement.

7. The covenant set forth in Paragraph 5 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor with respect to all matters other than those set forth in Paragraph 5. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on a failure to meet a requirement of this Settlement Agreement. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor with respect to the Site for liability under federal or state law for acts by the Debtor, its successors, or assigns that occur after the date of lodging of this Settlement Agreement.

8. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take any response action under Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606, or any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority, provided, however, that nothing in this sentence affects the covenant set forth in Paragraph 5. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or regulation, or to excuse the Debtor from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation.

9. The Debtor covenants not to sue and agrees not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Site, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities at the Site. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

10. Notwithstanding any other provision of this Settlement Agreement, the Debtor reserves, and this Settlement Agreement is without prejudice to, claims against the United States in the event any claim is asserted by the United States against the

Debtor pursuant to any of the reservations set forth in Paragraph 7, other than for failure to meet a requirement of this Settlement Agreement, but only to the extent that the Debtor's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

11. The Parties hereto agree, and by entering this Settlement Agreement the Bankruptcy Court finds, that this Settlement Agreement constitutes a judicially-approved settlement pursuant to which Debtor has, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Site by the United States or any potentially responsible parties, provided, however, that, if EPA exercises rights under the reservations in Paragraph 7, other than for failure to meet a requirement of this Settlement Agreement, the "matters addressed" in this Settlement Agreement shall no longer include those response costs or response actions that are within the scope of the exercised reservation.

12. This Settlement Agreement constitutes a judicially-approved settlement pursuant to which Debtor has, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

13. This Settlement Agreement shall be subject to approval of the Bankruptcy Court. The Debtor shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

14. This Settlement Agreement shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations that indicate that the Settlement Agreement is not in the public interest.

15. If for any reason (a) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 14, or (b) the Settlement Agreement is not approved by the Bankruptcy Court, (i) this Settlement Agreement shall be null and void, and the Parties shall not be bound under the Settlement Agreement or under any documents executed in connection herewith, (ii) the Parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith, and (iii) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

16. This Settlement Agreement constitutes the sole and complete agreement of the Parties with respect to the matters addressed herein.

17. This Settlement Agreement may not be amended except by a writing signed by each of the Parties and approved by the Bankruptcy Court.

18. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the District of Puerto Rico) shall retain jurisdiction over the subject matter of this Settlement Agreement and the Parties for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling each of the Parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

The undersigned party hereby enters into this Settlement Agreement in *In re J.J.W. Metal Corp.*, Case No. 20-04536-EAG11 (Bankr. D.P.R.).

FOR THE UNITED STATES OF AMERICA:

Ellen M. Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

By: _____
Donald G. Frankel
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Environment and Natural Resources Division
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617-947-9590
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The undersigned party hereby enters into this Settlement Agreement in *In re J.J.W. Metal Corp.*, Case No. 20-04536-EAG11 (Bankr. D.P.R.).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:


Date: August 25, 2022

By: _____
Pat Evangelista
Director
Superfund and Emergency Management
Division
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

The undersigned party hereby enters into this Settlement Agreement in *In re J.J.W. Metal Corp.*, Case No. 20-04536-EAG11 (Bankr. D.P.R.).

FOR THE DEBTOR:

Date: 8/22/2022

By: 

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