

ELLEN M. MAHAN
Deputy Chief, Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resources Division

KARL J. FINGERHOOD (PA Bar No. 63260)
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-7519
Email: karl.fingerhood@usdoj.gov

Attorneys for Plaintiff United States of America

(Names and addresses of attorneys continued on following page)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA, and the
CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

Case No.

Plaintiffs,

COMPLAINT

V.

JERVIS B. WEBB COMPANY and JERVIS
B. WEBB COMPANY OF CALIFORNIA,

Defendants.

1 JIM COLLINS
2 Assistant Regional Counsel
3 U.S. Environmental Protection Agency
4 Region 9
5 75 Hawthorne Street
6 San Francisco, CA 94105
7 Tel: (415) 972-3218
8 Email: collins.jim@epa.gov

9
10 *Of Counsel for Plaintiff United States of America*

11 XAVIER BECERRA
12 Attorney General of California
13 EDWARD H. OCHOA
14 Supervising Deputy Attorney General
15 OLIVIA W. KARLIN (CA Bar No. 150432)
16 Deputy Attorney General
17 300 South Spring Street, Suite 1702
18 Los Angeles, CA 90013
19 Tel.: (213) 269-6333
20 Fax: (213) 897-2802
21 Email: olivia.karlin@doj.ca.gov

22
23 *Attorneys for Plaintiff State of California*
24 *Department of Toxic Substances Control*
25
26
27
28

The United States of America (“United States”), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the California Department of Toxic Substances Control (“DTSC”), collectively referred to as “Plaintiffs,” allege as follows:

STATEMENT OF THE ACTION

1. This is a civil action by the United States of America for recovery of response costs incurred or to be incurred under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607, related to the releases and threatened releases of hazardous substances at the Jervis B. Webb Superfund Site in South Gate, Los Angeles County, California (the “Site”).

2. This is also a civil action by DTSC for recovery of costs under Section 107 of CERCLA, 42 U.S.C. § 9607 and for a declaratory judgment pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that each Defendant is jointly and severally liable to DTSC for future response costs that it incurs that is not inconsistent with the NCP in responding to releases and threatened releases of hazardous substances at, beneath, and/or related to the Site.

3. Plaintiffs have incurred response costs and expect to continue to incur response costs in connection with actions taken in response to releases and/or threatened releases of hazardous substances at the Site.

4. Jervis B. Webb Company of California (“Webb-Cal”) is among the parties the Plaintiffs have determined to be potentially responsible parties (“PRPs”) for the Site.

5. This is also a civil action by the United States against Jervis B. Webb Company (“JBW”) under the Federal Debt Collection and Procedures Act (“FDCPA”), 28 U.S.C. §§ 3001-3308 *et seq.*, to recover assets transferred from

1 Webb-Cal to JBW at a time when Webb-Cal was insolvent and indebted to the
2 United States.

3 **JURISDICTION AND VENUE**

4 6. This Court has jurisdiction over the subject matter of this action and
5 over Defendants pursuant to 28 U.S.C. §§ 1331, 1367, and 1345; CERCLA
6 Sections 107, and 113(b), 42 U.S.C. §§ 9607, and 9613(b).

7 7. Venue is proper in this district under Section 113(b) of CERCLA, 42
8 U.S.C. § 9613(b), because the claims arose, and/or the threatened and actual
9 releases of hazardous substances occurred, in the Western Division of the Central
10 District of California.

11 **PLAINTIFFS**

12 8. Plaintiff the United States of America is acting at the request of EPA,
13 an agency of the United States.

14 9. Plaintiff DTSC is a public agency of the State of California existing
15 under and pursuant to sections 58000-58018 of the California Health and Safety
16 Code. DTSC is a state agency responsible under state law for determining whether
17 there has been a release and/or threatened release of a hazardous substance into the
18 environment, and for determining the actions to be taken in response thereto.

20 **DEFENDANTS**

21 10. The defendants to this action (collectively "Defendants") are Webb-
22 Cal and JBW.

23 11. JBW is a Michigan corporation with its principal place of business in
24 Farmington Hills, Michigan.

25 12. Webb-Cal was a California corporation from 1949 until its dissolution
26 in 2003. JBW was a shareholder in Webb-Cal from the time of Webb-Cal's
27 incorporation until its dissolution. From 1992 until the dissolution of Webb-Cal,
28

1 JBW owned 100% of the shares of Webb-Cal, and Webb-Cal was a wholly owned
2 subsidiary of JBW.

3 13. Each of the Defendants is a “person” within the meaning of Section
4 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5 **THE SITE**

6 14. The Site comprises approximately 3.82 acres in South Gate, Los
7 Angeles County, California, and was used for various manufacturing operations
8 dating back to the 1950s. Volatile organic compounds, including trichloroethene
9 (“TCE”), have been confirmed in the soils and groundwater at the site. Industrial
10 conveyor belt systems were manufactured from the 1950s to early 1996 on the
11 southeast portion of the site. Aluminum and stainless steel aircraft rivets were
12 produced on the northwest portion of the site, until about 1981. Site investigations
13 and cleanup planning are ongoing.

14 **GENERAL ALLEGATIONS**

15 **A. Webb-Cal**

16 15. From approximately 1953 to 2003, Webb-Cal owned and operated
17 portions of or the whole of the Site. At various times during its ownership and
18 operation, Webb-Cal manufactured cranes and conveyors on the Site. From
19 approximately 1975 to 1984, Webb-Cal leased a portion of the Site to Blake Rivet
20 Company (“Blake”). Blake manufactured aircraft rivets on a portion of the Site
21 from the 1950s until approximately 1984. Blake has ceased doing business and is
22 insolvent.

23 16. The Site is upgradient of the Cooper Drum Company Superfund Site
24 and first came to the attention of the regulatory authorities during sampling related
25 to the Copper Drum Company Superfund Site. EPA performed a Preliminary
26 Assessment/Site Investigation in 1994. Soil borings taken in the late 1990s
27 detected elevated levels of TCE and perchloroethene (“PCE”) in the soils at the
28

1 northern part of the Site. In 1998 five groundwater wells were installed at the Site
2 and subsequent sampling detected elevated levels of TCE and PCE in Site
3 groundwater.

4 17. Hazardous substances, such as the volatile organic compounds PCE
5 and TCE, were detected in Site soils and groundwater in sampling performed by
6 Webb-Cal pursuant to directives of the Los Angeles Regional Water Quality
7 Control Board (“RWQCB”) between 1997 and 2005. PCE and TCE are
8 “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42
9 U.S.C. § 9601(14).

10 18. Under the direction of the RWQCB, Webb-Cal installed and operated
11 a soil vapor extraction system from 1998 through 2001 at a portion of the Site. In
12 addition, in 1997 TCE was detected in on-site soils. In 1999, Webb-Cal excavated
13 and removed the contaminated soil and backfilled it with clean material under the
14 oversight of the RWQCB. Sampling results indicated that elevated levels of TCE
15 remained in the groundwater (approximately 33,000 ppb of TCE) after the soil
16 excavation was complete.

17 19. In 2001, following the soil excavation, Webb-Cal requested a “no
18 further action letter” from the RWQCB. In early 2003, the RWQCB refused to
19 issue a “no further action letter” for the groundwater contamination at the Site, as
20 groundwater sampling at the Site consistently detected levels of TCE thousands of
21 times higher than the maximum contamination level.

22 20. In April of 2006, the RWQCB transferred oversight of the Site to
23 DTSC.

24 21. On October 23, 2008, DTSC sent a letter to Webb-Cal transmitting a
25 draft Imminent and Substantial Endangerment Determination and draft Consent
26 Order.

1 22. On February 2, 2010, DTSC issued an Imminent and Substantial
2 Endangerment Order to JBW.

3 23. In performing the response actions at the Site, DTSC has incurred
4 response costs and may incur additional response costs in the future.

5 24. On January 18, 2011, DTSC referred the Site to EPA to assume lead
6 oversight responsibilities.

7 25. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed
8 the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B,
9 by publication in the Federal Register on May 5, 2012, 77 Fed. Reg. 27,368.

10 26. EPA has undertaken a Remedial Investigation/Feasibility Study
11 ("RI/FS") of the Site pursuant to 40 C.F.R. § 300.430. The RI/FS commenced in
12 2014 and is ongoing. In performing this response action at the Site, EPA has
13 incurred response costs and will incur additional response costs in the future.

14 27. The United States, as of November 7, 2017, has incurred at least \$ 3.1
15 million in unreimbursed response costs (including interest), as defined in Section
16 101(25) of CERCLA, 42 U.S.C. § 9601(25), by responding to the releases or
17 threatened releases of hazardous substances at the Site. DTSC has incurred at least
18 \$68,746.99 in unreimbursed response costs (including interest), as defined in
19 Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and California Health and
20 Safety Code section 25323.3, by responding to the releases or threatened releases
21 of hazardous substances at the Site.

22 28. Plaintiffs' response costs are not inconsistent with the National
23 Contingency Plan, which is codified at 40 C.F.R. Part 300. Plaintiffs' response
24 actions include, but are not limited to, the initial investigation of the Site and the
25 performance of a combined Remedial Investigation/Feasibility Study.

1 29. The Site is a “facility” within the meaning of Section 101(9) of
2 CERCLA, 42 U.S.C. § 9601(9), and a “site” within the meaning of California
3 Health and Safety Code Section 25323.9.

4 30. There were and are “releases” and threatened “releases” of hazardous
5 substances at and from the Site into the environment, within the meaning of
6 Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and the Site poses threats or
7 potential threats to human health and/or the environment.

8 31. Defendant Webb-Cal is a “person who at the time of disposal of any
9 hazardous substance owned or operated any facility at which such hazardous
10 substances were disposed of,” within the meaning of Sections 107(a)(2) of
11 CERCLA, 42 U.S.C. § 9607(a)(2).

13 **B. JBW**

15 32. At the time of its dissolution in 2003, Webb-Cal transferred to JBW,
16 and JBW received from Webb-Cal, all of Webb-Cal’s remaining assets in an
17 amount exceeding \$2.7 million.

18 33. At the time of its dissolution, the President and the sole Director of
19 Webb-Cal was also President and a Director of JBW.

20 34. At the time of its dissolution, Webb-Cal was aware of EPA and the
21 RWQCB’s investigations at the Site as well as the extensive TCE contamination in
22 the groundwater at the Site.

23 35. At the time of its dissolution, Webb-Cal was indebted to the United
24 States for the costs incurred and to be incurred in response to the hazardous
25 substances released at and from the Site.

27 36. The FDCPA provides that transfers that are fraudulent as to a debt to
28 the United States can be voided to the extent necessary to satisfy a debt to the
United States. 28 U.S.C. § 3306.

1 37. The statute defines "debtor" as a person who is liable for a "debt" or
2 against whom there is a "claim". 28 U.S.C. § 3001. A "debt" is defined as, among
3 other things, "an amount that is owing to the United States on account of fine, . . .,
4 penalty, . . . interest." *Id.* A "claim" means "a right to payment, whether or not the
5 right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,
6 unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 28
7 U.S.C. § 3301. A "transfer" means "every mode, direct or indirect, absolute or
8 conditional, voluntary, or involuntary, of disposing of or parting with an asset or an
9 interest in an asset . . ." *Id.* An "insider" includes an affiliate or a person in control
10 of the debtor. *Id.* A debtor is considered "insolvent" if the sum of the debtor's debts
11 is greater than all the debtor's assets at a fair valuation. 28 U.S.C. § 3302(a). For
12 purposes of Section 3302, assets do not include the transferred assets. *Id.* at §
13 3302(d).

14 38. A transfer made by a debtor is fraudulent as to a debt to the United
15 States, whether such debt arises before or after the transfer is made, if the debtor
16 makes the transfer with actual intent to hinder, delay, or defraud a creditor. 28
17 U.S.C. § 3304(b)(1)(A).

18 39. In determining actual intent, consideration may be given to the
19 following factors, among others: whether the transfer was made to an insider;
20 whether the transfer was disclosed; whether before the transfer was made or
21 obligation was incurred, the debtor had been sued or threatened with suit; whether
22 the value of the consideration received by the debtor was reasonably equivalent to
23 the value of the asset transferred; whether the transfer was of substantially all the
24 debtor's assets; whether the debtor was insolvent or became insolvent after the
25 transfer was made; whether the transfer occurred shortly before or shortly after a
26 substantial debt was incurred. 28 U.S.C. § 3304(b)(2).

27
28

40. The transfer of all its assets to JBW by Webb-Cal at the time of its dissolution rendered Webb-Cal insolvent.

41. The transfer of assets from Webb-Cal to JBW was made with the actual intent to hinder, delay, or defraud the United States as a creditor of Webb-Cal.

FIRST CLAIM FOR RELIEF

42. Paragraphs 1-31 are realleged and incorporated herein by reference.

43. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . .

shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan...

44. Defendant Webb-Cal is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(2), as a person which owned or operated a facility at the time at which hazardous substances were disposed of.

45. Plaintiffs have incurred and will continue to incur costs of removal and remedial actions not inconsistent with the National Contingency Plan to respond to the release or threatened release of hazardous substances at the Site, or of hazardous substances which came to be located at the Site, within the meaning of sections 101(23), 101(24), and 101(25) of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25).

46. Webb-Cal is liable to Plaintiffs pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), for all unrecovered response costs, plus interest on those response costs, incurred by Plaintiffs in connection with the Site.

47. Plaintiffs are entitled to a declaratory judgment on liability against Webb-Cal, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding in any subsequent action to recover further response costs incurred by Plaintiffs in connection with the Site.

SECOND CLAIM FOR RELIEF

48. Paragraphs 1-41 are realleged and incorporated herein by reference.

49. Webb-Cal transferred \$2.7 million to JBW, an insider, at the time of its dissolution; such transfer was of substantially all of Webb-Cal's assets and rendered Webb-Cal insolvent; and such transfer was made after the United States had incurred response costs at the Site and shortly before or after the RWQCB refused to issue a "no further action letter" for the groundwater contamination at the Site.

50. Webb-Cal's transfer to JBW was made with actual intent to hinder, delay, or defraud the United States. 28 U.S.C. § 3304(b)(1)(A).

51. JBW is liable to the United States for the value of the assets received by JBW from Webb-Cal pursuant to the provisions of sections 3304(b) and 3306 of the FDCPA, 28 U.S.C. §§ 3304(b) and 3306.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter:

1. Against Defendant Webb-Cal, a judgment pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred by Plaintiffs relating to the Site through November 7, 2017, plus interest;

2. Against Defendant Webb-Cal, a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), of Defendant's liability, which will be binding in any subsequent action against Defendant seeking to recover further response costs incurred by Plaintiffs in connection with the Site;

3. An order pursuant to 28 U.S.C. § 3306, requiring that the transfer to Defendant JBW from Defendant Webb-Cal be voided in order to satisfy the judgment in this case; and

4. Against Defendants, an order granting such other relief as the Court deems appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF
AMERICA

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources
Division

ELLEN M. MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
Division

Date

KARL A. FINGERHOOD

Senior Counsel

Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

OF COUNSEL FOR THE UNITED STATES OF AMERICA.

JIM COLLINS

Assistant Regional Counsel

Assistant Regional Counsel
U.S. Environmental Protection Agency

U.S. ENV.

1 FOR THE STATE OF CALIFORNIA
2 DEPARTMENT OF TOXIC
3 SUBSTANCES CONTROL AND TOXIC
4 SUBSTANCES CONTROL ACCOUNT

5 XAVIER BECERRA
6 Attorney General of California
7 EDWARD H. OCHOA
8 Supervising Deputy Attorney General

9 Jan 10, 2018

10 Date

11 Olivia W. Karlin

12 OLIVIA W. KARLIN
13 Deputy Attorney General
14 Attorneys for California Department of
15 Toxic Substances Control

