



**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

<b>STATE OF OHIO, ex rel.</b>	:	<b>CASE NO. CV 21 946410</b>
<b>DAVE YOST</b>	:	
<b>OHIO ATTORNEY GENERAL,</b>	:	<b>JUDGE COLLIER-WILLIAMS</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>CENTURY PLATING, INC., et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

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**JOINT MOTION TO ENTER CONSENT ORDER**

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Plaintiff, the State of Ohio (“State”), along with Defendant Gerard Fanta (“Fanta”) and Defendant Fantaco, Inc. (“Fantaco”) (collectively “Fanta Defendants”), request that this Court approve and enter the attached proposed Consent Order for Permanent Injunction and Civil Penalties between Plaintiff, State of Ohio and Defendants Gerard Fanta and Fantaco, Inc. (“Consent Order”). This Consent Order fully resolves all pending matters between the State and Fanta Defendants. Therefore, the State and Fanta Defendants ask the Court to approve the attached Consent Order.

Respectfully submitted,

**DAVE YOST**  
**OHIO ATTORNEY GENERAL**

s/ Karrie P. Kunkel  
Karrie P. Kunkel (0089755)  
Ian F. Gaunt (0097461)  
Morgan L. Trivunic (0100589)

s/ Joseph P. Koncelik  
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*Counsel for Defendants Gerard Fanta and  
Fantaco, Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Joint Motion to Enter Consent Order was served via email on February 8, 2023, upon the following:

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s/ Karrie P. Kunkel  
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Assistant Attorneys General

*Counsel for Plaintiff, State of Ohio*

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	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>CENTURY PLATING, INC., et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

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**CONSENT ORDER FOR PERMANENT INJUNCTION AND CIVIL PENALTIES  
BETWEEN PLAINTIFF, STATE OF OHIO AND DEFENDANTS GERARD FANTA  
AND FANTANCO, INC.**

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The State of Ohio, through its Attorney General (“Plaintiff”/“the State”) and at the written request of the Director of the Ohio Environmental Protection Agency (“the Director”), has filed a Complaint seeking injunctive relief and civil penalties against Defendants Century Plating, Inc., Gerard Fanta, and Fantaco, Inc. for their violations of Ohio’s hazardous waste pollution control laws under R.C. Chapter 3734 and the rules adopted thereunder, concerning the operation of a metal plating facility located at 18006 South Waterloo Road, Cleveland, Ohio 44119. This Consent Order pertains only to Defendants Gerard Fanta and Fantaco, Inc. (“Fanta Defendants”), who have consented to the entry of this Order. The State’s claims against Defendant Century Plating, Inc. remain outstanding.

Therefore, without trial, admission, or determination of any issue of fact or law and with the consent of the Parties hereto, it is ORDERED, ADJUDGED, AND DECREED:

## I. DEFINITIONS

1. As used in this Order, the following terms are defined:
  - a. "Closure Plan" means a closure plan that has been submitted in accordance with Ohio Adm. Code 3745-55-10 through 3745-55-20 and is ultimately approved by the Director. The approved closure plan may be a closure plan approved by the Director as submitted by Fanta Defendants, or a closure plan approved by the Director after being submitted by Fanta Defendants and modified by the Director.
  - b. "Director" means the Director of the Ohio Environmental Protection Agency ("Ohio EPA") or his designee.
  - c. "Effective Date" means the date the Cuyahoga County Clerk of Courts files this Order.
  - d. "Fanta Defendants" means Gerard Fanta and Fantaco, Inc.
  - e. "Hazardous Waste Management Units" means the areas on the exterior of the property outside the building located at 18006 South Waterloo Road where the Fanta Defendants stored, treated, and/or transported a 400-gallon poly tote containing hazardous wastes and the area on the adjacent property outside the building located at 17920 South Waterloo Road where a release occurred that contained liquid hazardous waste as defined by R.C. 3734.01(J) and Ohio Adm. Code 3745-51-03.
  - f. "Parties" means Plaintiff, the State of Ohio, and Defendants Gerard Fanta and Fantaco, Inc.
  - g. "Person" means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
  - h. "Sites" means the property at 18006 South Waterloo Road, Cleveland, Cuyahoga County, Ohio 44119 and the property located at 17920 South Waterloo Road, Cleveland, Cuyahoga County, Ohio 44119.
  - i. "State" means Plaintiff State of Ohio, by and through its Attorney General, Dave Yost, at the written request of the Director of Environmental Protection.
  - j. "Order" refers to this Order.

## **II. JURISDICTION AND VENUE**

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapter 3734. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Fanta Defendants shall not challenge the Court's jurisdiction to enter or enforce this Order.

## **III. PARTIES BOUND**

3. Defendant Gerard Fanta is an individual with an address of 7600 Cairn Ln, Gates Mills, Ohio 44040.

4. Defendant Fantaco, Inc. is a corporation organized by the laws of the State of Ohio with a mailing address of 3858 Superior Avenue, Cleveland Oh 44103.

5. This Order shall apply to and be binding only upon Fanta Defendants, and, to the extent consistent with Civ. R. 65(D), on their agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Fanta Defendants who receive actual notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Fanta Defendants shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein or to operate the Site.

6. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.

7. If insolvency, bankruptcy, or other failure occurs, Fanta Defendants must pay the remaining unpaid balance of the total civil penalty.

#### **IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS**

8. Plaintiff alleges in its Complaint that Fanta Defendants violated hazardous waste laws of the State of Ohio under R.C. Chapter 3734. Fanta Defendants deny all such allegations. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Compliance with this Order shall constitute full satisfaction of any civil liability of Fanta Defendants and their officers, agents, servants, employees, successors in interest, and those persons in active concert or participation with them to Plaintiff for the following: a) claims alleged in Plaintiff's Complaint up to the date of the Court's entry of this Consent Order; b) the violations set forth in the January 9, 2023 Notice of Violation (NOV) issued to Defendant Fantaco regarding Hawkins Hodgson LTD II (a copy of the NOV is attached as Exhibit C); and c) the illegally transported 55-gallon container of hazardous waste located at 1520 E. 40<sup>th</sup> Street, Cleveland, Ohio 44103, which was removed and properly managed as shown on the manifest attached as Exhibit D. The State's claims against Defendant Century Plating, Inc. as set forth in the Complaint remain outstanding, however. Fanta Defendants do not have any civil liability for such claims against Defendant Century Plating, Inc.

9. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with the Consent Order and/or any work performed at the Site does not constitute and cannot be admitted as evidence of admission of any liability, wrongdoing, or misconduct on part of Fanta Defendants, their officers, employees, or agents by the State of Ohio.

10. Nothing in this Order, including the imposition of stipulated civil penalties for violations of this Order, shall limit the authority of the State of Ohio to:

- a. Seek any legal or equitable relief or civil penalties from Fanta Defendants or any other appropriate person for any claims or violations not alleged in the Complaint or addressed as set forth in Paragraph 8 of this Order;

- b. Seek any legal or equitable relief or civil penalties from Fanta Defendants or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order;
- c. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
- d. Take any future legal or equitable action against any appropriate person, including Fanta Defendants, to eliminate or mitigate conditions at the Site that may present a threat to public health or welfare or to the environment in derogation of applicable laws and rules, which State of Ohio has the authority to enforce.
- e. Bring any action against Fanta Defendants or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, et seq. and/or Revised Code 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Order.

11. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Fanta Defendants.

12. Except for the signatories to the Order, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Order for any liability such non-signatory may have arising out of matters alleged in the Complaint. The State of Ohio also specifically reserves its right to sue any entity that is not a signatory to this Order.

13. Nothing in this Order shall relieve Fanta Defendants of their obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

14. Nothing herein shall restrict the right of Fanta Defendants to raise any administrative, legal, or equitable defense with respect to such further actions reserved by the State in this Section. However, with respect to the actions reserved by the State in this Section, Fanta Defendants shall not assert and/or maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue



preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

Fanta Defendants agree that each is jointly and severally liable for the obligations and requirements in this Order.

#### **V. PERMANENT INJUNCTION**

15. Fanta Defendants are ordered and permanently enjoined to comply fully with R.C. Chapter 3734 and the rules promulgated thereunder.

16. Fanta Defendants have prepared approvable Closure Plans to address the violations described in Paragraph 8 of this Consent Order and attached to this Consent Order as follows:

- a. Closure Plan for 18006 South Waterloo Road (attached as Exhibit A); and
- b. Closure Plan for 17920 South Waterloo Road (attached as Exhibit B).

17. Fanta Defendants shall implement these Closure Plans once approved by Ohio EPA in accordance with Ohio Adm.Code 3745-55-10 through 3745-55-20, and follow the administrative processing requirements contained in Ohio Adm.Code 3745-66.

- a. Within 30 days of receipt of notice of approval by Ohio EPA of the Closure Plans, either as originally submitted, as revised, or as revised and modified, Fanta Defendants are ordered and enjoined to implement the approved Closure Plans of the Hazardous Waste Management Units Fanta Defendants established at the Sites in the manner and time frames set forth in the approved Closure Plans
- b. If Fanta Defendants are required to submit an amended Closure Plan to Ohio EPA, the Closure Plan shall be amended in accordance with Ohio Adm.Code 3745-55-12(C). Ohio EPA will approve, revise, or revise and modify the amended Closure Plan, and Fanta Defendants shall implement the approved amended Closure Plan.
- c. Within ninety (90) days of Ohio EPA's approval of the closure plan, Fanta Defendants must establish liability coverage in accordance with Ohio Adm. Code 3745-55-47.
- d. Within ninety (90) days of Ohio EPA's approval of the Closure Plan, Fanta Defendants must comply with the closure cost estimate and financial assurance requirements, including any annual updates, in accordance with Ohio Adm.Code 3745-55-41 through

3745-55-43..

- e. Fanta Defendants are ordered and enjoined to amend the approved Closure Plan pursuant to Ohio Adm.Code 3745-55-12 whenever:
  - i. Changes in operating plans or facility design affect the Closure Plan; or there is a change in the expected year of closure, if applicable; or
  - ii. In conducting partial or final closure activities, unexpected events require a modification of the Closure Plan.

18. Within thirty (30) days of completion of closure, Fanta Defendants are ordered and enjoined to submit certification of closure to Ohio EPA, pursuant to Ohio Adm.Code 3745-55-15, and a survey plat, pursuant to Ohio Adm.Code 3745-55-16 (if necessary).

19. All closure and post-closure plans developed for the Site shall be enforceable under this Order as though fully incorporated herein.

20. Nothing in this Section shall limit Fanta Defendants' or any other entity's rights to appeal any final action of the Director regarding approval, denial or approval with conditions of the Closure Plan to the Environmental Review Appeals Commission.

21. If Fanta Defendants fail to comply with any of the requirements of this Section, the Plaintiff reserves its rights to exercise its lawful authority to require Fanta Defendants to perform full closure of all hazardous waste units at the Sites, pursuant to R.C. Chapter 3734.

#### **VI. CIVIL PENALTY**

22. Under R.C. 3734.13, Fanta Defendants are ordered to jointly and severally pay a civil penalty of ten thousand dollars (\$10,000), subject to the provisions in the Section. A payment of five thousand dollars (\$5,000) shall be made within fourteen (14) days of the effective date of this Order. The final payment of five thousand dollars (\$5,000) shall be made within one hundred twenty (120) days of the Order. Payments shall be made by delivering to Sandra Finan, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad St., 25<sup>th</sup> Floor, Columbus, Ohio

43215, a certified check or checks for the appropriate amount, payable to the order of “Treasurer, State of Ohio.”

23. If full payment of the civil penalty and any other amount due under this Consent Order is not received by the State in accordance with the terms of this Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.

24. If any amount is not paid in accordance with the terms of this Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Consent Order, collection costs of ten percent shall be owing and fully recoverable from the Fanta Defendants to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

25. The State reserves the right to file a certificate of judgment lien against Fanta Defendants for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest and collection costs, if the full civil penalty payment is not paid according to the schedule in this Order. Fanta Defendants shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than the full civil penalty as specified in this Order.

26. If any Fanta Defendant files a petition for bankruptcy, the State of Ohio reserves the right to file a certificate of judgment lien against the other, non-filing Defendant, for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest.

## VII. STIPULATED PENALTIES

27. If Fanta Defendants fail to comply with any of the requirements of Section V. (Permanent Injunction) this Order, Fanta Defendants shall immediately and automatically be jointly and severally liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- b. Fanta Defendants shall pay two hundred fifty dollars (\$250.00) per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;
- c. For each day any requirement of this Order is violated between thirty (30) days and ninety (90) days of violation, Fanta Defendants shall pay five hundred dollars (\$500.00) per day;
- d. For each day any requirement of this Order is violated greater than (90) days of violation, Fanta Defendants shall pay seven hundred and fifty dollars (\$750.00) per day.

28. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and delivered to Sandra Finan, Paralegal, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

29. Fanta Defendants' payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 3734 including civil penalties under R.C. 3734.13; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by Fanta Defendants shall not be an admission of liability by Fanta Defendants.

### **VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS**

30. Performance of the terms of this Order by Fanta Defendants is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Fanta Defendants' performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

### **IX. FACILITY ACCESS**

31. As of the Effective Date, to the extent Fanta Defendants obtained legal access from the owners of the Sites, Ohio EPA and its representatives and contractors shall have access at reasonable times to the Sites, and shall have access to any other property controlled by or available to Fanta Defendants to which access is necessary to effectuate the actions required by this Order. Access shall be allowed for the purposes of conducting activities related to this Order including but not limited to:

- a. Monitoring the work or any other activities taking place at the Sites;
- b. Verifying any data or information submitted to Ohio EPA;
- c. Conducting investigations relating to contamination at or near the Sites;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Sites;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Fanta Defendants or their agents, consistent with this Order and applicable law; or
- g. Assessing Fanta Defendants' compliance with this Order.

Nothing in this Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon the Sites or any other private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any

records to determine compliance with R.C. Chapters 3734.

#### **X. SUBMITTAL OF DOCUMENTS**

32. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA  
Division of Environmental Response and Revitalization  
50 West Town Street, Suite 700  
Columbus, Ohio 43215  
Attn: Hazardous Waste Program Compliance Manager  
Email: Mitchell.Mathews@epa.ohio.gov

Ohio EPA  
Northeast District Office  
Division of Emergency Response and Revitalization  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: Hazardous Waste Program Manager  
Email: Natalie.Oryshkewych@epa.ohio.gov

#### **XI. EFFECT OF ORDER**

33. This Order does not constitute authorization or approval of the construction, installation, modification, or operation of any hazardous waste facility, or any building, structure, facility, facility component, operation, installation, disposal or storage site, other physical facility, or real or personal property that stores, discharges, or otherwise manages or hazardous waste not previously approved by Ohio EPA. Approval for any such construction, installation, modification, or operation shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

#### **XI. MODIFICATION**

34. No modification shall be made to this Order without the written agreement of the parties and the Court.

#### **XII. MISCELLANEOUS**

35. Nothing in this Order shall affect Fanta Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules, ordinances, or orders.

36. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve Fanta Defendants from the obligations created by this Order.

37. Defendant Gerard Fanta shall inform the Ohio EPA of any change of his personal address and Defendant Fantaco, Inc. shall inform Ohio EPA of any change in Registered Agents' address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

#### **XIV. RETENTION OF JURISDICTION**

38. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

#### **XV. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK**

39. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

**XVI. COURT COSTS**

40. Fanta Defendants are ordered to pay all court costs of this action.

**XVII. AUTHORITY TO ENTER INTO THE ORDER**

41. Each signatory represents and warrants he has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.



**IT IS SO ORDERED.**

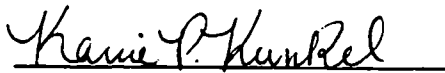
  
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**JUDGE CASSANDRA COLLIER-WILLIAMS**

2/13/2023  
**DATE**

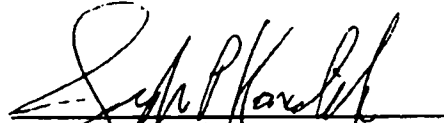
**APPROVED AND AGREED TO BY:**

**DAVE YOST  
OHIO ATTORNEY GENERAL**

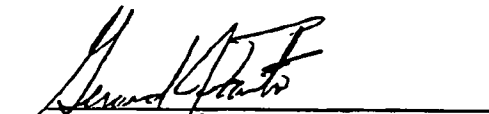
**GERARD FANTA AND  
FANTACO, INC.**


  
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*Counsel for Defendants Gerard Fanta and  
Fantaco, Inc.*

  
\_\_\_\_\_  
Gerard Fanta (in his individual capacity)  
Defendant

  
\_\_\_\_\_  
Gerard Fanta (on behalf of Fantaco, Inc.)  
Defendant