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21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 FOR THE COUNTY OF ALAMEDA

23 CENTER FOR ENVIRONMENTAL HEALTH, a
24 non-profit corporation,
25 Plaintiff,
26 v.
27 A BABY, INC., *et al.*,
28 Defendants.

For Entry in Case Nos. RG-13667688 and
RG-13688520
*Assigned for All Purposes to the Honorable
George Hernandez, Jr., Department 17*

**[PROPOSED] CONSENT
JUDGMENT AS TO
DEFENDANT BEXCO
ENTERPRISES, INC.**

PETER ENGLANDER,
Plaintiff,
v.
BEXCO ENTERPRISES, INC., *et al.*,
Defendants.

1 **1. INTRODUCTION**

2 1.1. This Consent Judgment is entered into by Plaintiffs, Center for Environmental
3 Health (“CEH”), a non-profit corporation, and Peter Englander (“Englander”), an individual, and
4 Defendant Bexco Enterprises, Inc. (“Defendant”) to settle claims asserted by CEH and Englander
5 against Defendant as set forth in their respective complaints entitled *Center for Environmental*
6 *Health v. A Baby, Inc., et al.* (Alameda County Superior Court Case No. RG-13667688), and
7 *Peter Englander v. Bexco Enterprises, Inc., et al.* (Alameda County Superior Court Case No.
8 RG-13688520) (collectively, the “Actions”). CEH, Englander, and Defendant are each referred
9 to individually as a “Party” and collectively as the “Parties.”

10 1.2. On February 1, 2013, CEH served a “Notice of Violation” of the California Safe
11 Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) (the “CEH Notice”) on
12 Defendant, the California Attorney General, the district attorneys of every county in the State of
13 California, and the city attorneys for every city in State of California with a population greater
14 than 750,000. The CEH Notice alleges violations of Proposition 65 with respect to the presence
15 of tris(1,3-dichloro-2-propyl)phosphate (“TDCPP”) in foam-cushioned pads for children and
16 infants to lie on, such as infant mattress pads, manufactured, distributed, and/or sold by
17 Defendant.

18 1.3. On April 11, 2013, Englander served a “Notice of Violation” of Proposition 65
19 (the “First Englander Notice”) on Defendant, the California Attorney General, the district
20 attorneys of every county in the State of California, and the city attorneys for every city in State
21 of California with a population greater than 750,000. The First Englander Notice alleges
22 violations of Proposition 65 with respect to the presence of TDCPP in foam-cushioned
23 upholstered furniture, including ottomans, manufactured, sold, and/or distributed for sale in
24 California without a warning by Defendant.

25 1.4. On October 4, 2013, Englander served a “Notice of Violation” of Proposition 65
26 (the “Second Englander Notice”) on Defendant, the California Attorney General, the district
27 attorneys of every county in the State of California, and the city attorneys for every city in State

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1 of California with a population greater than 750,000. The Second Englander Notice alleges
2 violations of Proposition 65 with respect to the presence of TDCPP in foam-cushioned
3 upholstered furniture, including chairs and ottomans, manufactured, sold, and/or distributed for
4 sale in California without a warning by Defendant. The CEH Notice and Englander Notices are
5 referred to collectively hereinafter as the "Notices." To the best of the Parties' knowledge, no
6 public enforcer has commenced and is diligently prosecuting any of the violations alleged in the
7 Notices.

8 1.5. Defendant is a corporation that employs ten (10) or more persons and that
9 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of
10 California.

11 1.6. For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
12 Court has jurisdiction over the allegations of violations contained in the Notices and Complaints
13 and personal jurisdiction over Defendant as to the acts alleged in the Complaints; (ii) venue is
14 proper in Alameda County; and (iii) this Court has jurisdiction to enter this Consent Judgment as
15 a full and final resolution of all claims which were or could have been raised in the Complaints
16 based on the facts alleged in the Notices and Complaints with respect to Covered Products
17 manufactured, distributed, and/or sold by Defendant.

18 1.7. The Parties enter into this Consent Judgment as a full and final settlement of all
19 claims that were or which could have been raised in the Complaints arising out of the facts or
20 conduct related to Defendant alleged therein. By execution of this Consent Judgment and
21 agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or
22 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as
23 an admission by the Parties of any fact, conclusion of law, or violation of law. Defendant denies
24 the material, factual, and legal allegations in the Notices and Complaints and expressly denies
25 any wrongdoing whatsoever. Except as specifically provided herein, nothing in this Consent
26 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense any Party
27 may have in this or any other pending or future legal proceedings. This Consent Judgment is the

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1 product of negotiation and compromise and is accepted by the Parties solely for purposes of
2 settling, compromising, and resolving issues disputed in these Actions.

3 **2. DEFINITIONS**

4 2.1. "Chemical Flame Retardant" means any halogenated or phosphorous-based
5 chemical compound used for the purpose of resisting or retarding the spread of fire. "Chemical
6 Flame Retardant" does not include any chemical that has been rated as a Benchmark 4 chemical
7 pursuant to Clean Production Action's GreenScreen ([http://www.cleanproduction.org/
8 Green.Greenscreen.php](http://www.cleanproduction.org/Green.Greenscreen.php)).

9 2.2. "Covered Furniture Products" means foam-cushioned upholstered furniture,
10 including, without limitation, chairs and gliders, manufactured, distributed, and/or sold by
11 Defendant in California.

12 2.3. "Covered Reclining Pad Products" means foam-cushioned pads for children and
13 infants to lie on, including, without limitation, infant mattress pads, manufactured, distributed,
14 and/or sold by Defendant in California.

15 2.4. "Covered Products" means Covered Furniture Products and Covered Reclining
16 Pad Products.

17 2.5. "Effective Date" means the date on which the Court enters this Consent
18 Judgment.

19 2.6. "Listed Chemical Flame Retardants" means Tris(1,3-dichloro-2-propyl) phosphate
20 ("TDCPP"), Tris(2-chloroethyl) phosphate ("TCEP"), and Tris(2,3-dibromopropyl) phosphate
21 ("TDBPP").

22 2.7. "Listed Chemical Flame Retardant Limit" means the maximum concentration of a
23 Listed Chemical Flame Retardant specified in Section 3.1.1.

24 2.8. "Manufacture Date" means the date the Covered Product was manufactured and
25 as may be indicated on a tag attached to the Covered Product.

26 2.9. "Reformulated Products" are Covered Products that comply with the Listed
27 Chemical Flame Retardant Limit established by this Consent Judgment.

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1 2.10. “TB 117” means Technical Bulletin No. 117, entitled “Requirements, Test
2 Procedures and Apparatus for Testing the Flame Retardance of Filling Materials Used in
3 Upholstered Furniture,” dated March 2000.

4 2.11. “TB 117-2013” means Technical Bulletin 117-2013, entitled “Requirements, Test
5 Procedures and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered
6 Furniture,” approved on November 21, 2013 by the California Bureau of Electronic and
7 Appliance Repair, Home Furnishings and Thermal Insulation.

8 2.12. “TB 117-2013 Effective Date” means the date on which filling materials and
9 cover fabrics in upholstered furniture are required to meet the fire retardant requirements in TB
10 117-2013 pursuant to the proposed amendments to Section 1374 of Article 2 of Title 4 of the
11 California Code of Regulations.

12 2.13. “Treated” means the addition or application of any Chemical Flame Retardant to
13 any polyurethane foam, cushioning, or padding used as filling material in any Covered Product.

14 2.14. “Untreated Foam” means polyurethane foam that has not been Treated with any
15 Chemical Flame Retardant.

16 **3. INJUNCTIVE RELIEF**

17 3.1. **Reformulation of Covered Products.** Defendant will comply with the following
18 requirements to reformulate the Covered Products to eliminate exposures to TDCPP and other
19 Listed Chemical Flame Retardants arising from the use of the Covered Products:

20 3.1.1. **Proposition 65-Listed Chemical Flame Retardants.** As of the Effective
21 Date, Defendant shall not distribute, sell, or offer for sale in California any Covered Product that
22 has a Manufacture Date that is on or later than the Effective Date which has been intentionally
23 Treated with any Listed Chemical Flame Retardant. Defendant also agrees to immediately work
24 with its vendors and/or other suppliers of Covered Products to only manufacture for sale or
25 purchase for sale in California Covered Products that contain “No Detectable Amount” of any
26 Listed Chemical Flame Retardant. “No Detectable Amount” is defined as containing no more
27 than 25 parts per million (the equivalent of 0.0025%) each of any Listed Chemical Flame

1 Retardant, when analyzed by an accredited, domestic laboratory (i.e., within the United States)
2 pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by
3 federal or state agencies to determine the presence or absence of, or to measure the amount of, a
4 Listed Chemical Flame Retardant in a solid substance.

5 3.1.2. **Warnings for Products in Inventory.** Any Covered Products in which
6 the polyurethane foam has been Treated with any Listed Chemical Flame Retardant and which is
7 manufactured prior to the Effective Date, but distributed, sold, or offered for sale by Defendant
8 in California after the Effective Date, shall be accompanied by a Clear and Reasonable Warning
9 that complies with Section 3.1.3.

10 3.1.3. **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
11 Consent Judgment shall state:

12 **WARNING:** This product contains Tris(1,3-dichloro-2-propyl)
13 phosphate (“TDCPP”), a chemical known to the State of
California to cause cancer.¹

14 A Clear and Reasonable Warning shall not be preceded by, surrounded by, or include any
15 additional words or phrases that contradict, obfuscate, or otherwise undermine the warning. The
16 warning statement shall be prominently displayed on the Covered Product or the packaging of
17 the Covered Product with such conspicuousness, as compared with other words, statements, or
18 designs as to render it likely to be read and understood by an ordinary individual prior to sale.
19 Any warning displayed on the bottom of an unpackaged Covered Product offered for sale to
20 California consumers shall not be considered a Clear and Reasonable Warning for purposes of
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22 ¹ As Bexco represents that it has been using the regulatory safe harbor warning language specified
23 in 27 Cal. Code Regs § 25603.2 prior to the Effective Date, such warning may also be
24 used. Should Defendant seek to use alternative warning language, other than the language
25 specified above or the safe harbor warning specified in 27 Cal. Code Regs § 25603.2, or seek to
26 use an alternate method of transmission of the warning, Defendant shall obtain the Court’s
27 approval of its proposed alternative and provide CEH, Englander, and the Office of the Attorney
General with timely notice and the opportunity to comment or object before the Court acts on the
request. In the event that Defendant’s application for Court approval of an alternative warning is
contested by CEH or Englander, the prevailing party shall be entitled to its reasonable attorneys’
fees associated with opposing or responding to the opposition to the application. No fees shall be
recoverable for the initial application seeking an alternative warning.

1 this Section. For internet, catalog, or any other sale where the consumer is not physically present
2 and cannot see a warning displayed on the Covered Product or the packaging of the Covered
3 Product prior to purchase or payment, the warning statement shall be displayed in such a manner
4 that it is likely to be read and understood prior to the authorization of or actual payment.

5 **3.1.4. Warnings for Products in the Stream of Commerce.** In an effort to
6 ensure that consumers receive clear and reasonable warnings in compliance with Proposition 65
7 for Covered Products that have not been reformulated pursuant to Section 3.1.1 or labeled in
8 accordance with Section 3.1.2, within 30 days following the Effective Date, Defendant shall
9 provide warning materials by certified mail to each of those California retailers or distributors to
10 whom Defendant reasonably believes it sold Covered Products that contained or may have
11 contained any Listed Chemical Flame Retardant after October 31, 2011, if Defendant does not
12 have actual knowledge that (i) the retailer or distributor is no longer holding such Covered
13 Products in inventory for sale in California or (ii) a Proposition 65 warning is already provided
14 for such Covered Products. Such warning materials shall include a reasonably sufficient number
15 of hang tags in order to permit the retailer or distributor to place a warning tag on each Covered
16 Product (considering the size of each particular customer and the amount of Covered Products
17 each customer has purchased), a letter of instruction for the placement of the stickers, and a
18 Notice and Acknowledgment postcard. The hang tags shall contain the warning language set
19 forth in Section 3.1.3.

20 **3.1.5. Specification To and Certification From Suppliers.** To ensure
21 compliance with the product reformulation provisions of this Consent Judgment, following the
22 Effective Date, Defendant shall directly or through its supply chain issue specifications to its
23 suppliers of polyurethane foam, cushioning, or padding used as filling material in any Covered
24 Product requiring that such components have not been Treated with any Listed Chemical Flame
25 Retardant in accordance with the requirements of Section 3.1.1. Defendant shall obtain and
26 maintain written certification(s) from its suppliers of polyurethane foam, cushioning, or padding
27 confirming that all such foam having a Manufacture Date after the Effective Date and received
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1 by Defendant for distribution in California after the Effective Date has not been Treated with any
2 Listed Chemical Flame Retardant. Defendant shall not be deemed in violation of the
3 requirements of Section 3.1.1 for any Covered Product to the extent: (a) it has relied on a written
4 certification from its vendor that supplied a Covered Product or the polyurethane foam,
5 cushioning, or padding used as filling material in the Covered Product that such Covered
6 Product, foam, cushioning or padding is made with only Untreated Foam, and/or, if such
7 certification is not relied on or has previously been demonstrated to be invalid, (b) it has obtained
8 a test result from an independent third party certified laboratory reporting that the Covered
9 Product's polyurethane foam, cushioning, or padding used as filling material has been made with
10 no Listed Chemical Flame Retardants.

11 **4. PENALTIES AND PAYMENTS**

12 4.1. **Payments to CEH.** Defendant shall make an initial payment to CEH in the total
13 sum of fifty-five thousand dollars (\$55,000), which shall be allocated as follows:

14 4.1.1. \$6,050 shall constitute a penalty pursuant to Cal. Health & Safety Code §
15 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety
16 Code § 25249.12.

17 4.1.2. \$8,250 shall constitute a payment in lieu of civil penalty pursuant to Cal.
18 Health & Safety Code § 25249.7(b) and 11 Cal. Code Regs § 3203(b). CEH will use such funds
19 to continue its work of educating and protecting the public from exposures to toxic chemicals,
20 including Chemical Flame Retardants. CEH may also use a portion of such funds to monitor
21 compliance with this Consent Judgment and to purchase and test Defendant's products to
22 confirm compliance. In addition, as part of its Community Environmental Action and Justice
23 Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental
24 justice groups working to educate and protect the public from exposures to toxic chemicals. The
25 method of selection of such groups can be found at the CEH website at
26 www.ceh.org/justicefund.

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1 4.1.3. \$40,700 shall constitute reimbursement of CEH's reasonable attorneys'
2 fees and costs.

3 4.1.4. The payment required under this Section shall be made in three separate
4 checks. All of the payments shall be sent within 10 days following the Effective Date. The
5 payments required pursuant to Section 4.1.1 and 4.1.2 shall each be made payable to CEH and
6 mailed to CEH at the address set forth in Section 9 below. The payment required pursuant to
7 Section 4.1.3 shall be made payable to Lexington Law Group and mailed to Lexington Law
8 Group at the address set forth in Section 9 below.

9 4.1.5. **Additional Payment.** In the event that Defendant does not certify
10 compliance with Section 5.2, Defendant shall make an additional payment of \$22,000 to CEH 60
11 days following the TB 117-2013 Effective Date. This additional payment shall be allocated as
12 follows:

13 4.1.5.1. \$8,800 shall constitute a penalty pursuant to Cal. Health &
14 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health
15 & Safety Code § 25249.12.

16 4.1.5.2. \$13,200 shall constitute a payment in lieu of civil penalty
17 pursuant to Cal. Health & Safety Code § 25249.7(b) and 11 Cal. Code Regs § 3203(b). CEH
18 will use such funds as set forth in Section 4.1.2.

19 4.2. **Payments to Englander.** Defendant shall pay to Englander the total sum of fifty-
20 five thousand dollars (\$55,000), which shall be allocated as follows:

21 4.2.1. \$13,000 shall constitute a penalty pursuant to Cal. Health & Safety Code §
22 25249.7(b), such money to be apportioned by Englander in accordance with Cal. Health &
23 Safety Code § 25249.12.

24 4.2.2. \$42,000 shall constitute reimbursement of Englander's reasonable
25 attorneys' fees and costs.

26 4.2.3. **Additional Payment.** In the event that Defendant does not certify
27 compliance with Section 5.1, Defendant shall make an additional civil penalty payment of

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1 \$15,000 to Englander no later than October 1, 2014. This additional civil penalty payment shall
2 be allocated in accordance with Cal. Health & Safety Code § 25249.12.

3 4.2.4. The payments required under Sections 4.2.1 and 4.2.2 shall be made in
4 three separate checks. All of the payments shall be sent within 10 days of the Effective Date to
5 the address provided in Section 9.1.2(b). The checks shall be made payable to: “The Chanler
6 Group in Trust for Peter Englander” in the amount of \$3,250; (b) “OEHHA” in the amount of
7 \$9,750; (c) and “The Chanler Group” in the amount of \$42,000.

8 **5. OPTIONAL PENALTY REDUCTION CREDITS AND WAIVERS**

9 5.1. **Accelerated Reformulation Waiver -- TDCPP.** The additional payment to
10 Englander set forth in Section 4.2.3 in the amount of \$15,000 shall be waived, if Defendant
11 agrees that, as of October 1, 2014, and continuing thereafter, Defendant will only manufacture,
12 import, sell, or distribute for sale in California, Reformulated Products as defined in Section 2.9
13 above. To qualify for this waiver of additional payment to Englander, an officer of Defendant’s
14 organization must provide Englander with a written certification confirming timely compliance
15 with the above reformulation standards no later than September 15, 2014. The option to certify
16 early reformulation in lieu of making an additional payment to Englander constitutes a material
17 term of this Consent Judgment, and with regard to such term, time is of the essence.

18 5.2. **Additional Reformulation Waiver – Use of Untreated Foam.** The additional
19 payment to CEH set forth in Section 4.1.5 in the amount of \$22,000 shall be waived, if
20 Defendant agrees that, as of 30 days following the TB117-2013 Effective Date, Defendant will
21 not manufacture, import, sell, or distribute for sale in California any Covered Product that has
22 been Treated with any Chemical Flame Retardant. To qualify for this waiver of additional
23 payment to CEH, Defendant must provide written certification to CEH of its use of only
24 Untreated Foam within 60 days following the TB 117-2013 Effective Date.

25 5.2.1. **Specification To and Certification From Suppliers.** To ensure
26 compliance with the provisions of Section 5.2, to the extent that Defendant opts for additional
27 reformulation, Defendant shall directly or through its supply chain issue specifications to its
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1 suppliers of polyurethane foam, cushioning, or padding used as filling material in any Covered
2 Product requiring that such components shall use only Untreated Foam. Defendant shall not be
3 deemed in violation of the requirements of Section 5.2 for any Covered Product to the extent: (a)
4 it has relied on a written certification from its vendor that supplied a Covered Product, or the
5 polyurethane foam, cushioning, or padding used as filling material in the Covered Product, that
6 such Covered Product, foam, cushioning, or padding is made with only Untreated Foam, and/or
7 (b) it has obtained a test result from a certified laboratory reporting that the Covered Product's
8 polyurethane foam, cushioning, or padding used as filling material has been made with Untreated
9 Foam. Defendant shall obtain and maintain written certification(s) from its suppliers of
10 polyurethane foam, cushioning, or padding confirming that all such foam received by Defendant
11 for distribution in California is Untreated Foam.

12 **6. ENFORCEMENT OF CONSENT JUDGMENT**

13 6.1. CEH and/or Englander may, by motion or application for an order to show cause
14 before the Superior Court of Alameda County, enforce the terms and conditions contained in this
15 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
16 Sections 3 or 5 above, CEH and/or Englander shall provide Defendant with a Notice of Violation
17 and a copy of any test results which purportedly support CEH's and/or Englander's Notice of
18 Violation. The Parties shall then meet and confer regarding the basis for CEH's and/or
19 Englander's anticipated motion or application in an attempt to resolve it informally, including
20 providing Defendant a reasonable opportunity of at least thirty (30) days to cure any alleged
21 violation. Should such attempts at informal resolution fail, CEH and/or Englander may file
22 its/his enforcement motion or application. The prevailing Party on any motion to enforce this
23 Consent Judgment shall be entitled to its/his reasonable attorney's fees and costs incurred as a
24 result of such motion or application. This Consent Judgment may only be enforced by the
25 Parties.

26 **7. MODIFICATION OF CONSENT JUDGMENT**

27 7.1. This Consent Judgment may only be modified by a written agreement of the
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1 Parties and the subsequent entry of an order by the Court approving such modification, or upon
2 motion brought by CEH, Englander, or Defendant, as provided by law, and the subsequent entry
3 of a modified judgment by the Court thereon. The Parties agree and understand that the Office
4 of the Attorney General of the State of California shall receive notice of any effort by any Party
5 or the Parties to seek any modification of the terms of this Consent Judgment.

6 **8. CLAIMS COVERED AND RELEASE**

7 8.1. This Consent Judgment is a full, final, and binding resolution between CEH and
8 Englander acting in the public interest, and Defendant and Defendant's parents, officers,
9 directors, shareholders, divisions, subdivisions, subsidiaries, and its successors and assigns
10 ("Defendant Releasees") and all entities to whom it distributes or sells Covered Products
11 including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,
12 cooperative members, and licensees ("Downstream Defendant Releasees") of all claims alleged
13 in the Actions, or either complaint filed therein, arising from any violation of Proposition 65 that
14 has been or could have been asserted in the public interest against Defendant and Downstream
15 Defendant Releasees, regarding the failure to warn about exposures to TDCPP in the Covered
16 Products manufactured, distributed, or sold by Defendant prior to the Effective Date.

17 8.2. CEH and Englander, for themselves, release, waive, and forever discharge any
18 and all claims alleged in the in the Actions, or either complaint filed therein, against Defendant
19 and Downstream Defendant Releasees arising from any violation of Proposition 65 that has been
20 or could have been asserted regarding the failure to warn about exposures to TDCPP in
21 connection with Covered Products manufactured, distributed, or sold by Defendant prior to the
22 Effective Date.

23 8.3. Compliance with the terms of this Consent Judgment by Defendant and the
24 Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Defendant
25 and Downstream Defendant Releasees with respect to any alleged failure to warn about TDCPP
26 in Covered Products manufactured, distributed, or sold by Defendant after the Effective Date.

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1 8.4. Defendant, on its own behalf, and on behalf of its past and current agents,
2 representatives, attorneys, successors, and assignees, hereby waives any and all claims against
3 CEH and Englander and their attorneys and other representatives, for any and all actions taken or
4 statements made by CEH and Englander and their attorneys and other representatives, whether in
5 the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in the
6 Actions, or with respect to the Covered Products.

7 **9. PROVISION OF NOTICE**

8 9.1 When any Party is entitled to receive any notice under this Consent Judgment, the
9 notice shall be sent by first class and electronic mail as follows:

10 9.1.1. **Notices to Defendant.** The persons for Defendant to receive notices
11 pursuant to this Consent Judgment shall be:

12 John Kwok
13 Chief Financial Officer
14 Bexco Enterprises, Inc.
15 855 Washington Blvd.
16 Montebello, CA 90640
17 john@mdbmail.com

18 with a copy to:

19 Eugene F. McMenamin
20 Atkinson, Andelson, Loya, Ruud & Romo
21 12800 Center Court Drive, Suite 300
22 Cerritos, CA 90703
23 EMcmenamin@aalrr.com

24 and

25 Edward C. Ho
26 Atkinson, Andelson, Loya, Ruud & Romo
27 12800 Center Court Drive, Suite 300
28 Cerritos, CA 90703
 EHo@aalrr.com

 9.1.2. **Notices to Plaintiffs.** The persons for CEH and Englander to receive
notices pursuant to this Consent Judgment shall be:

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9.1.2(a). For CEH:

Rick Franco
Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612
rick@ceh.org

with a copy to:

Mark Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

9.1.2(b). For Englander:

The Chanler Group
Attn: Proposition 65 Coordinator
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

9.2. Any Party may modify the person and address to whom the notice is to be sent by sending the other parties notice by first class and electronic mail.

10. COURT APPROVAL

10.1. This Consent Judgment shall become effective on the Effective Date, provided however, that CEH and Englander shall cooperate on the preparation and filing of a Motion for Approval of this Consent Judgment, and Defendant shall support approval of such Motion, including appearing at the hearing on the motion if so requested.

10.2. If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

11. GOVERNING LAW AND CONSTRUCTION

11.1. The terms and obligations arising from this Consent Judgment shall be construed and enforced in accordance with the laws of the State of California.

1 **12. ENTIRE AGREEMENT**

2 12.1. This Consent Judgment contains the sole and entire agreement and understanding
3 of CEH, Englander, and Defendant with respect to the entire subject matter hereof, and any and
4 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
5 hereby merged herein and therein.

6 12.2. There are no warranties, representations, or other agreements between CEH,
7 Englander, and Defendant except as expressly set forth herein. No representations, oral or
8 otherwise, express or implied, other than those specifically referred to in this Consent Judgment
9 have been made by any Party hereto.

10 12.3. No other agreements not specifically contained or referenced herein, oral or
11 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
12 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
13 any of the Parties hereto only to the extent that they are expressly incorporated herein.

14 12.4. No supplementation, modification, waiver, or termination of this Consent
15 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

16 12.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
17 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
18 such waiver constitute a continuing waiver.

19 **13. RETENTION OF JURISDICTION**

20 13.1. This Court shall retain jurisdiction of this matter to implement or modify the
21 Consent Judgment.

22 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

23 14.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
25 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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15. NO EFFECT ON OTHER SETTLEMENTS

15.1. Nothing in this Consent Judgment shall preclude CEH and/or Englander from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

16. EXECUTION IN COUNTERPARTS

16.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

Dated: 20 JUNE, 2014

CENTER FOR ENVIRONMENTAL HEALTH



Signature

CHARLIE PIZANCO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: _____, 2014

PETER ENGLANDER

Signature

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15. NO EFFECT ON OTHER SETTLEMENTS

15.1. Nothing in this Consent Judgment shall preclude CEH and/or Englander from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

16. EXECUTION IN COUNTERPARTS

16.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

Dated: _____, 2014

CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

Dated: June 20, 2014

PETER ENGLANDER

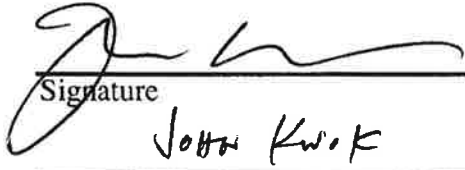
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Dated: June 16th, 2014

BEXCO ENTERPRISES, INC.



Signature

John Kwok

Printed Name

efo

Title

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _ _____, 2014

Judge of the Superior Court of the State of
California, County of Alameda