

1 LEXINGTON LAW GROUP  
Mark N. Todzo (State Bar No. 168389)  
2 Lucas Williams (State Bar No. 264518)  
503 Divisadero Street  
3 San Francisco, CA 94117  
Telephone: (415) 913-7800  
4 Facsimile: (415) 759-4112  
mtodzo@lexlawgroup.com  
5 lwilliams@lexlawgroup.com

6 Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH  
7

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN DIEGO

10 CENTER FOR ENVIRONMENTAL  
11 HEALTH, a non-profit corporation,

12 Plaintiff,

13 v.

14 SENIOR OPERATIONS, LLC; and DOES 1  
through 20, inclusive,

15 Defendant.  
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Case No. 37-2018-00005835-CU-MC-CTL

**[PROPOSED] CONSENT JUDGMENT**

Judge: Judith F. Hayes  
Department: C-68

1     **1.     INTRODUCTION**

2             **1.1.**     This Consent Judgment is entered into by Plaintiff Center for Environmental  
3     Health, a non-profit corporation (“CEH”), and Senior Operations LLC (“Settling Defendant”) to  
4     settle claims asserted by CEH against Settling Defendant as set forth in the operative Complaint  
5     in the matter *Center for Environmental Health v. Senior Operations, LLC, et al.*, San Diego  
6     Superior Court Case No. 37-2018-00005835-CU-MC-CTL (the “Action”). CEH and Settling  
7     Defendant are referred to collectively as the “Parties.”

8             **1.2.**     On June 16, 2017, CEH served its initial 60-Day Notice of Violation (the  
9     “Notice”) relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986,  
10    California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Settling Defendant, the  
11    California Attorney General, the District Attorney for the County of San Diego and City Attorney  
12    for the City of San Diego.

13            **1.3.**     The Notice alleges violations of Proposition 65 with respect to exposures of  
14    trichloroethylene (“TCE”) allegedly caused by groundwater that emanated from the site located at  
15    790 Greenfield Drive, El Cajon, CA 92021 (the “Site”).

16            **1.4.**     Settling Defendant is a corporation that employs ten (10) or more persons and that  
17    allegedly owns and/or operates the Site.

18            **1.5.**     On July 11, 2017, Settling Defendant responded to the Notice advising the  
19    Plaintiff, the California Attorney General, the District Attorney for the County of San Diego and  
20    City Attorney for the City of San Diego of the following, and providing supporting documents in  
21    support of its contentions that:

22                   **1.5.1.**   There has been extensive agency oversight of and clean-up and abatement  
23    orders regarding the Site;

24                   **1.5.2.**   There has been ongoing remediation and monitoring efforts of the Site by  
25    the current responsible party, Ametek, Inc.;

26                   **1.5.3.**   Since Settling Defendant began operations at the Site, it has not used, does  
27    not use, and has no plans to use TCE at the Site;

1                   **1.5.4.** The San Diego Regional Water Quality Control Board (“Water Board”)  
2 determined that Senior did not cause or permit the discharge of waste containing TCE to the  
3 groundwater in the area of the Site (San Diego Regional Water Quality Control Board, Resolution  
4 No. 98-14 (February 11, 1998) (“RWQCB Res. 98-14”) at ¶ 6.);

5                   **1.5.5.** Senior Flexonics, Inc. (subsequently renamed and re-registered as Senior  
6 Operations LLC) only purchased the Site in 1998 *after* government agencies signed a Prospective  
7 Purchaser Agreement releasing it and its successors and assigns from any liability for the  
8 investigation, cleanup or abatement of existing conditions of pollution and contamination caused  
9 by the discharge of chlorinated solvents by Ametek and Ketema Inc. at the Site (RWQCB Res.  
10 98-14, Attachment 1);

11                   **1.5.6.** The Water Board, and subsequently the Department of Toxic Substances  
12 Control, has been involved in investigating, monitoring and issuing clean up and abatement  
13 orders of the Site;

14                   **1.5.7.** Ametek is the responsible party that is and has been cleaning up the Site;

15                   **1.5.8.** The Helix Water District provides the drinking water for the area. The  
16 groundwater has not been and is not presently used for drinking water; and

17                   **1.5.9.** The alleged exposures were not caused by Settling Defendant’s operations.

18                   **1.6.** On February 1, 2018, CEH filed the Complaint in the Action naming Settling  
19 Defendant as a defendant therein.

20                   **1.7.** On April 6, 2018, Settling Defendant filed an Answer generally denying all  
21 material allegations in the Action.

22                   **1.8.** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
23 Court has jurisdiction over the allegations of violations contained in the Notice and Complaint  
24 and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii)  
25 venue is proper in the County of San Diego; and (iii) this Court has jurisdiction to enter this  
26 Consent Judgment as a full and final resolution of all claims which were or could have been  
27 raised in the Complaint based on the facts alleged in the Notices and Complaint.

1           **1.9.**     Settling Defendant denies the material, factual, and legal allegations in the Notice  
2 and Complaint and expressly denies the applicability of Proposition 65 in this circumstance, and  
3 denies any wrongdoing whatsoever.

4           **1.10.**   The Parties enter into this Consent Judgment as a full and final settlement of all  
5 claims which were or could have been raised in the Complaint arising out of the facts or conduct  
6 related to Settling Defendant alleged therein. By execution of this Consent Judgment and  
7 agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or  
8 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an  
9 admission by the Parties of any fact, conclusion of law, or violation of law. Settling Defendant  
10 denies the material, factual, and legal allegations in the Notice and Complaint and expressly  
11 denies any wrongdoing whatsoever. Except as specifically provided herein, nothing in this  
12 Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense any  
13 of the Parties may have in this or any other pending or future legal proceedings. This Consent  
14 Judgment is the product of negotiation and compromise and is accepted by the Parties solely for  
15 purposes of settling, compromising, and resolving issues disputed in this Action.

## 16       **2.     DEFINITIONS**

17           **2.1.**     “Effective Date” means the date on which the Court enters this Consent Judgment.

18           **2.2.**     “Site” means the site located at 790 Greenfield Drive, El Cajon, CA 92021.

## 19       **3.     INJUNCTIVE RELIEF**

20           **3.1.     Clear and Reasonable Warnings.** As of the Effective Date and for a period of  
21 three years thereafter as set forth in Section 3.1.3, Settling Defendant shall use best efforts to  
22 provide warnings to individuals living and working within the perimeter of the area depicted in  
23 the map set forth in Section 3.1.1. The warnings shall use the warning language set forth in  
24 Section 3.1.1 and the warning methods set forth in 3.1.2.

25                   **3.1.1.   Content of the warnings.** The warning provided in accordance with this  
26 Section shall state the following in both English and Spanish:

 **WARNING**

Entering the area near the Senior Aerospace Ketema, the facility located at 790 Greenfield Drive, El Cajon, CA 92021, as identified in the attached map, can expose you to trichloroethylene (TCE). TCE is known to the State of California to cause cancer.

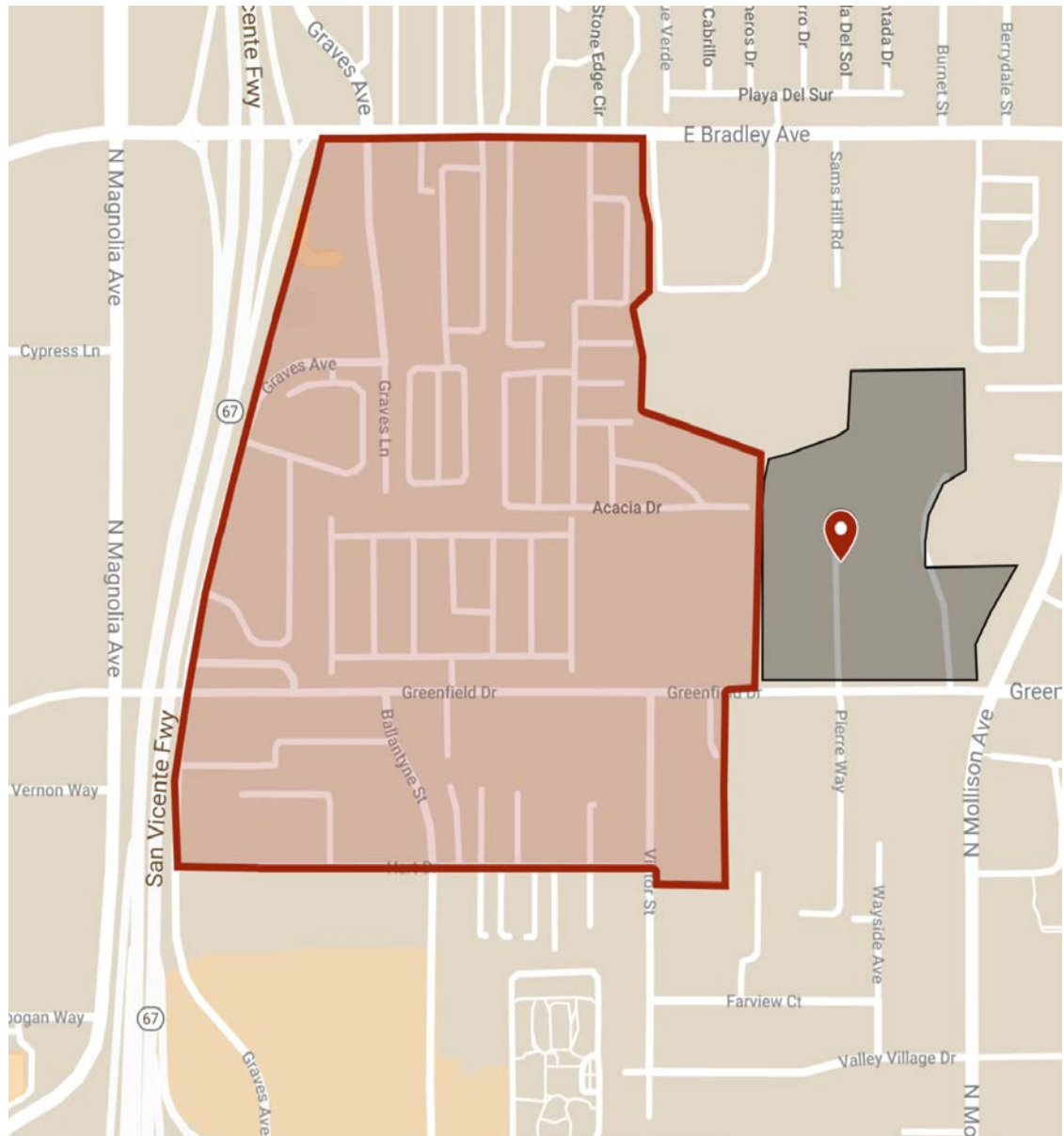
Visit [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov) and <https://www.atsdr.cdc.gov/toxfaqs/tfacts19.pdf> for more information.

 **ADVERTENCIA**

Al ingresar al área cercana a Senior Aerospace Ketema, ubicada en 790 Greenfield Drive, El Cajon, CA 92021, usted puede quedar expuesto a químicos incluyendo tricloroetileno (TCE), que es conocido por el Estado de California como causante de cáncer. Para mayor información,

visite [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov) y [https://www.atsdr.cdc.gov/es/toxfaqs/es\\_tfacts19.pdf](https://www.atsdr.cdc.gov/es/toxfaqs/es_tfacts19.pdf).

Below is a map containing a shaded pink area for the warnings. As set forth below, this is the area bounded by E. Bradley Avenue to the north, Hart Drive to the south, the San Vicente Freeway to the west and the western boundary of the Site to the east:



**3.1.2. Warning Method.** Within 90-days of the Effective Date and every ninety days thereafter, Settling Defendants shall use best efforts to cause a copy of the warning set forth in Section 3.1.1 above to be mailed or delivered to every residence and business set forth in the shaded area of the map set forth above. For purposes of this Consent Judgment, the parties agree that mailing or delivering the warning to the addresses obtained from the third party vendor, Marketing Lists Direct, for mail carrier route 92021-C044 (the “List of Addresses”) constitutes compliance with this Section. Plaintiff has provided Settling Defendant with the List of

1 Addresses, which shall serve as the list for the Warning Period. To the extent the warning is  
2 placed in an envelope, the envelope shall clearly state in both English and Spanish that an  
3 important health warning is enclosed.

4 **3.1.3. Duration of Warnings.** The warnings required under this section shall  
5 continue for a period of three years following the Effective Date (the “Warning Period”) subject  
6 to the provisions of this section. If, at any time *prior* to the conclusion of the three year period,  
7 Settling Defendant can demonstrate that the TCE exposures in the scope of the warning area have  
8 subsided below the level requiring a warning, Settling Defendant may initiate a meet and confer  
9 process with CEH to modify or eliminate the warning requirement.

10 **3.1.4. Compliance with Warning Requirements.** In the event of a material  
11 change to the applicable Proposition 65 warning requirements set forth in 27 Cal. Code of  
12 Regulations §25600, et seq., either Party may, following a 30-day meet and confer, seek to  
13 modify this Section to comply with those new regulations. Nothing in this Consent Judgment  
14 shall preclude Settling Defendant from complying with new or different provisions of Proposition  
15 65.

16 **3.1.5.** Nothing in this Consent Judgment shall bar a person/entity who is not a  
17 Party to this Consent Judgment from issuing Proposition 65 warnings relating to the alleged  
18 passive migration of TCE from the Site.

#### 19 **4. PAYMENTS**

20 **4.1.** Settling Defendant shall pay to CEH the total sum of one hundred and fifty  
21 thousand dollars (\$150,000), which shall be allocated as follows:

22 **4.1.1.** Nineteen thousand and five hundred dollars (\$19,500) as a civil penalty  
23 pursuant to California Health & Safety Code § 25249.7(b). The civil penalty payment shall be  
24 apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the  
25 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)).  
26 Accordingly, the OEHHA portion of the civil penalty payment for fourteen thousand six hundred  
27  
28

1 and twenty five dollars (\$14,625) shall be made payable to OEHHA and associated with taxpayer  
2 identification number 68-0284486. This payment to OEHHA shall be delivered as follows:

3 For United States Postal Service Delivery:

4 Attn: Mike Gyurics  
5 Fiscal Operations Branch Chief  
6 Office of Environmental Health Hazard Assessment  
7 P.O. Box 4010, MS #19B  
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:

10 Attn: Mike Gyurics  
11 Fiscal Operations Branch Chief  
12 Office of Environmental Health Hazard Assessment  
13 1001 I Street, MS #19B  
14 Sacramento, CA 95814

15 The CEH portion of the civil penalty payment for \$4,875 shall be made  
16 payable to the Center for Environmental Health and associated with taxpayer identification  
17 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
18 Street, San Francisco, CA 94117.

19 **4.1.2.** Fourteen thousand and five hundred dollars (\$14,500) as an Additional  
20 Settlement Payment (“ASP”) in lieu of civil penalty to CEH pursuant to Health & Safety Code §  
21 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH shall place these funds in  
22 the El Cajon Clean Air Fund. The fund will be used [in ways identified by impacted members of  
23 the El Cajon community] to educate the public about TCE and other air pollutants, to work with  
24 allied organizations to reduce exposure to TCE and other air pollutants, and to thereby reduce the  
25 public health impacts and risks of exposure to TCE and other air pollutants in California. CEH  
26 shall obtain and maintain adequate records to document that ASPs are spent on these activities  
27 and CEH agrees to provide such documentation to the Attorney General within thirty days of any  
28 request from the Attorney General. The payment pursuant to this Section shall be made payable  
to the Center for Environmental Health and associated with taxpayer identification number 94-  
3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San

1 Francisco, CA 94117. CEH agrees to provide Settling Defendant with a breakdown of how the  
2 ASP funds will be disbursed.

3 **4.1.3.** One hundred and sixteen thousand dollars (\$116,000) as a reimbursement  
4 of a portion of CEH's reasonable attorneys' fees and costs. This amount shall be divided into two  
5 checks: (1) a check for ninety four thousand dollars (\$94,000) shall be made payable to Lexington  
6 Law Group; and (2) a check for twenty two thousand dollars (\$22,000) shall be made payable to  
7 the Center for Environmental Health. Both of these payments shall be delivered to Lexington  
8 Law Group, 503 Divisadero Street, San Francisco, CA 94117.

9 **4.1.4.** To summarize, Settling Defendant shall deliver checks made out to the  
10 payees and in the amounts set forth below:

11 Payee	Type	Amount	Deliver To
12 OEHHA	Penalty	\$14,625	OEHHA per Section 4.1.1
13 Center For Environmental Health	Penalty	\$4,875	LLG
14 Center For Environmental Health	ASP	\$14,500	LLG
15 Lexington Law Group	Fee and Cost	\$94,000	LLG
16 Center For Environmental Health	Fee and Cost	\$22,000	LLG

17  
18 **4.1.5.** Making the payments under Sections 4.1.1-4.1.4 shall not be construed as  
19 an admission by Settling Defendant of any fact, issue of law or violation of law.

## 20 **5. ENFORCEMENT OF CONSENT JUDGMENT**

21 **5.1.** CEH may, by motion or application for an order to show cause before the Superior  
22 Court of San Diego County, enforce the terms and conditions contained in this Consent  
23 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3  
24 above, CEH shall meet and confer regarding the basis for CEH's anticipated motion or  
25 application in an attempt to resolve it informally, including by providing Settling Defendant with  
26 its evidence that Settling Defendant has failed to comply with the terms of this Consent Judgment  
27 and a reasonable opportunity of at least sixty (60) days to cure any alleged violation. Should such  
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1 attempts at informal resolution fail, CEH may file its enforcement motion or application alleging  
2 Settling Defendant failed to comply with the terms of this Consent Judgment. This Consent  
3 Judgment may only be enforced by the Parties.

#### 4 **6. MODIFICATION OF CONSENT JUDGMENT**

5 **6.1.** This Consent Judgment may only be modified by express written agreement of the  
6 Parties, upon motion of CEH or Settling Defendant as provided by law, or by an order of the  
7 Court.

#### 8 **7. RELEASE**

9 **7.1.** In exchange for the consideration herein, and except for the obligations created by  
10 this Agreement, CEH, on behalf of the public interest pursuant to Health and Safety Code  
11 §25249.7(d), including but not limited to that interest of the public within the designated areas of  
12 the map in this Agreement, hereby irrevocably and unconditionally remise, release, acquit,  
13 absolve and forever discharge Settling Defendant Senior, its past, present and future employees,  
14 officers, directors, subsidiaries, parents, joint ventures, members, domestic and foreign  
15 corporations, divisions, affiliates, partners, stockholders, agents, predecessors, successors,  
16 executors, administrators, assigns, representatives, insurers, attorneys, and persons or entities  
17 responsible for monitoring, remediating and/or cleaning up the Site (the “Senior Releasees”), of  
18 all claims alleged in the Notice and Complaint in this Action arising from any violation of  
19 Proposition 65 that was or could have been asserted in the public interest against Settling  
20 Defendant and Senior Releasees, regarding the failure to warn prior to the Effective Date.

21 **7.2.** CEH, acting on its own behalf and on behalf of its past, present and future  
22 employees, officers, directors, subsidiaries, corporate parents, joint venturers, members, domestic  
23 and foreign corporations, divisions, affiliates, partners, stockholders, predecessors, successors,  
24 executors, administrators, agents, assigns, representatives, insurers, and attorneys (“Plaintiff  
25 Releasing Parties”), hereby irrevocably and unconditionally remise, release, acquit, absolve and  
26 forever discharge Settling Defendant, its past, present and future employees, officers, directors,  
27 subsidiaries, parents, joint ventures, members, domestic and foreign corporations, divisions,  
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1 affiliates, partners, stockholders, agents, predecessors, successors, executors, administrators,  
2 assigns, representatives, insurers, attorneys, and persons or entities responsible for monitoring,  
3 remediating and/or cleaning up the Site (the "Senior Releasees"), of and from any and all manner  
4 of actions, causes of action, in law or in equity, debts, contracts, charges, liens, complaints,  
5 claims, suits, damages, obligations, promises, agreements, controversies, losses, costs, judgments,  
6 or expenses (including attorneys' fees and court costs), of any nature whatsoever, known or  
7 unknown, fixed or contingent, direct or derivative, subrogated or assigned, suspected or  
8 unsuspected, which the parties have or may have, or which the parties at any time, heretofore had  
9 or claimed to have, or which the parties at any time hereafter may have or claim to have, against  
10 one another by reason of any matter, cause, act, omission, or thing whatsoever from the beginning  
11 of time to the Effective Date of this Agreement arising from the Action, including unknown  
12 claims pursuant to California Civil Code § 1542 to the extent such claims relate to the matters set  
13 forth in the Complaint (the "Released Claims"). The Released Claims shall include, without  
14 limitation, any and all claims which were set forth or which could have been set forth as part of  
15 the Action based on the facts outlined in the same (except for the obligations created by this  
16 Agreement), including without limitation any claim for or relating to any alleged violation of the  
17 Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65").

18 **7.2.1.** The Releasing Parties hereby expressly and knowingly waive and  
19 relinquish any and all rights and benefits afforded by California Civil Code § 1542 (and under  
20 other statutes or common law principles of similar effect) which reads as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
22 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
23 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR  
24 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH  
25 THE DEBTOR.

26 **7.2.2.** The Releasing Parties hereby also expressly and knowingly waive other  
27 statutes or common law principles of similar effect. Releasing Parties acknowledges that each  
28

1 may hereafter discover facts different from, or in addition to, those which each now believes to be  
2 true with respect the Released Claims, and agrees that the foregoing release and waiver shall be  
3 and remain effective in all respects notwithstanding such different or additional facts or discovery  
4 thereof, and that this Stipulation of Settlement contemplates the extinguishment of all such  
5 Released Claims.

6 **7.3.** Compliance with the terms of this Consent Judgment shall constitute compliance  
7 with Proposition 65 by Settling Defendant and the Senior Releasees with respect to any alleged  
8 failure to warn under Proposition 65 from the Effective Date up through the Warning Period.

9 **8. PROVISION OF NOTICE**

10 **8.1.** When any Party is entitled to receive any notice under this Consent Judgment, the  
11 notice shall be sent by both overnight mail, with a signature required, and electronic mail as  
12 follows:

13 **8.1.1. Notices to Settling Defendant.** The persons for Settling Defendant to  
14 receive notices pursuant to this Consent Judgment shall be:

15 Kimberly Arouh  
16 Buchanan Ingersoll & Rooney LLP  
17 One America Plaza  
18 600 West Broadway, Suite 1100  
19 San Diego, CA 92101  
20 kimberly.arouh@bipc.com

21 With a copy to:

22 Emi Donis  
23 General Counsel, North America  
24 Senior Operations LLC  
25 300 East Devon Avenue  
26 Bartlett, IL 60103  
27 Edonis@seniorplcusa.com

28 **8.1.2. Notices to Plaintiff.** The persons for CEH to receive notices pursuant to this  
Consent Judgment shall be:

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

1     **9.     COURT APPROVAL**

2           **9.1.**     This Consent Judgment shall become effective on the Effective Date, provided  
3     however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
4     Settling Defendant shall not oppose such Motion.

5           **9.2.**     If this Consent Judgment is not entered by the Court, it shall be of no force or  
6     effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
7     purpose.

8     **10.    GOVERNING LAW AND CONSTRUCTION**

9           **10.1.**    The terms and obligations arising from this Consent Judgment shall be construed  
10    and enforced in accordance with the laws of the State of California.

11    **11.    ENTIRE AGREEMENT**

12           **11.1.**    This Consent Judgment contains the sole and entire agreement and understanding  
13    of CEH and Settling Defendant with respect to the entire subject matter hereof, and any and all  
14    prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
15    merged herein and therein.

16           **11.2.**    There are no warranties, representations, or other agreements between CEH and  
17    Settling Defendant except as expressly set forth herein. No representations, oral or otherwise,  
18    express or implied, other than those specifically referred to in this Consent Judgment have been  
19    made by any Party hereto.

20           **11.3.**    No other agreements not specifically contained or referenced herein, oral or  
21    otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
22    specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
23    any of the Parties hereto only to the extent that they are expressly incorporated herein.

24           **11.4.**    No supplementation, modification, waiver, or termination of this Consent  
25    Judgment shall be binding unless executed in writing by the Party to be bound thereby.

1           **11.5.** No waiver of any of the provisions of this Consent Judgment shall be deemed or  
2 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
3 such waiver constitute a continuing waiver.

4           **12. RETENTION OF JURISDICTION**

5           **12.1.** This Court shall retain jurisdiction of this matter to implement or modify the  
6 Consent Judgment.

7           **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

8           **13.1.** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
9 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
10 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

11           **14. EXECUTION IN COUNTERPARTS**

12           **14.1.** The stipulations to this Consent Judgment may be executed in counterparts and by  
13 means of facsimile, which taken together shall be deemed to constitute one document.

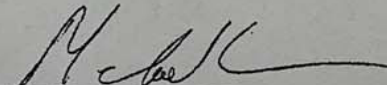
14           **IT IS SO ORDERED:**

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16           Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Judge of the Superior Court of California

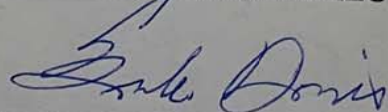
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18           **IT IS SO STIPULATED:**

19           **CENTER FOR ENVIRONMENTAL**  
20           **HEALTH**

21           

22           \_\_\_\_\_  
23           Michael Green  
24           Director

24           **SENIOR OPERATIONS LLC**

25           

26           \_\_\_\_\_  
27           Emi Donis  
28           General Counsel, North America