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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

13 **THE PEOPLE OF THE STATE OF
14 CALIFORNIA, ex rel., MEREDITH
15 WILLIAMS, DIRECTOR, DEPARTMENT
OF TOXIC SUBSTANCES CONTROL,**
16 **PLAINTIFF,**

17 v.

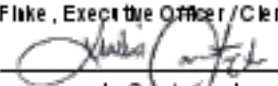
18 **RIVERBANK OIL TRANSFER, LLC, ET
19 AL.**
20 **DEFENDANTS.**

21 _____
22 **RIVERBANK OIL TRANSFER, LLC and
23 CALIFORNIA OIL TRANSFER, LLC,**
24 **Cross-complainants and Petitioner,**

25 v.

26 **MEREDITH WILLIAMS, in her official
27 capacity as Director of the California
Department of Toxic Substances Control;
28 KEITH KIHARA, in his individual capacity
and official capacity as Chief of the**

**EXEMPT FROM FILING FEES --
GOV. CODE SECTION 6103**

FILED
Superior Court of California
County of Alameda
09/01/2022
Clad Fluke, Executive Officer / Clerk of the Court
By:  Deputy
J. Castaneda

Case No. RG21090333

**~~PROPOSED~~ FINAL JUDGMENT FOR
CIVIL PENALTIES AND PERMANENT
INJUNCTION ON CONSENT**

1 **Enforcement and Emergency Response**
2 **Division of the California Department of**
3 **Toxic Substances Control; MARIA SORIA, in**
4 **her individual capacity and official capacity as**
5 **Acting Chief of the Enforcement and**
6 **Emergency Response Division of the**
7 **California Department of Toxic Substances**
8 **Control; BILL BECKMAN, in his individual**
9 **capacity and official capacity as Dispute**
10 **Resolution Official of the California**
11 **Department of Toxic Substances Control;**
12 **PHIL BLUM, in his individual capacity and**
13 **official capacity, as Senior Hazardous**
14 **Substances Engineer of the California**
15 **Department of Toxic Substances Control; and**
16 **Does 1 through 100,**

17 Cross-defendants and Respondent.

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9 *Attorneys for Cross-Defendants and Respondent*
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1 Plaintiff, the People of the State of California, ex rel. Meredith Williams, Director,
2 Department of Toxic Substances Control (“Plaintiff” or “DTSC”) and Defendants Riverbank Oil
3 Transfer, LLC, and California Oil Transfer, LLC (collectively referred to as “Defendants”) have
4 stipulated to the entry of this Final Judgment for Civil Penalties and Permanent Injunction on
5 Consent (“Judgment”) on the terms set forth in the Stipulation for Entry of Final Judgment for
6 Civil Penalties and Permanent Injunction on Consent among the Parties (“Stipulation”), filed in
7 this matter. Plaintiff and Defendants are collectively referred to as “the Parties” and singularly as
8 “Party” herein.

9 This Judgment addresses alleged violations of the California Hazardous Waste Control
10 Law, Health and Safety Code sections 25100 et. seq. (“HWCL”), and its implementing
11 regulations, California Code of Regulations, title 22, division 4.5, section 66260.1 et seq. (“Title
12 22 Regulations”) as alleged in Plaintiff’s Complaint for Civil Penalties and Injunctive Relief
13 (“Complaint”).

14 Pursuant to the Parties’ Stipulation, within seven (7) calendar days of the issuance of
15 Judgment on the Complaint, Defendants shall file a request for dismissal with prejudice of their
16 pending Cross-Complaint and Petition for Writ of Mandate in *Riverbank Oil Transfer, LLC and*
17 *California Oil Transfer, LLC v. Meredith Williams, et al.*, Alameda County Superior Court Case
18 No. RG21090333, and take all necessary actions to effectuate such dismissal with prejudice
19 including the dismissal with prejudice of individual Cross-Defendants Keith Kihara, Maria Soria,
20 Bill Beckman, and Phil Blum, with each Party to bear its own costs and attorney’s fees in those
21 proceedings.

22 The Court, pursuant to its authority under Code of Civil Procedure section 664.6, having
23 considered the Complaint, the Stipulation, and any other evidence or argument presented in this
24 action, and good cause appearing:

25 **NOW THEREFORE, UPON THE CONSENT OF THE PARTIES, IT IS HEREBY**
26 **ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

1 **1. THE COMPLAINT**

2 Plaintiff filed the Complaint against Defendants alleging violations under the HWCL and
3 the Title 22 Regulations based on DTSC’s inspections of the Facility (as defined *infra*) during
4 2016 and 2017.

5 **2. JURISDICTION**

6 The Superior Court of California, County of Alameda, has subject-matter jurisdiction over
7 the matters alleged in this action and personal jurisdiction over the Parties to this Judgment.
8 Venue in the Alameda Superior Court is proper under Health and Safety Code sections 25181 and
9 25183.

10 **3. DEFINITIONS**

11 Except where otherwise expressly defined in this Judgment, all terms shall be interpreted
12 consistent with the HWCL and the Title 22 regulations. The following terms used in this
13 Judgment shall have the meaning(s) set forth below:

14 A. “DTSC Action(s) and Proceeding(s),” whether or not in the name of the People of the
15 State of California, shall mean all enforcement, regulatory, or other types of actions,
16 proceedings, matters, and decisions (for purposes of this Judgment, “decisions” Includes
17 determinations), Including those pertaining to any Permit, other authorization, or the
18 VSP Program, with regard to Defendants, brought or pursued by, on behalf of, or against
19 DTSC. “DTSC Action(s) and Proceeding(s)” shall not include actions, proceedings,
20 matters, or decisions that involve Defendants and third parties, to which DTSC is neither
21 a party nor a real party in interest. In any DTSC Action(s) or Proceeding(s), the term
22 “DTSC” includes DTSC, any DTSC official or employee, or any DTSC-administered
23 account, whether as a party or a real party in interest.

24 B. “Facility” means the used oil transfer facility which is regulated pursuant to hazardous
25 waste permit for CalEPA ID # CAL000190816 and has a street address of 5300 Claus
26 Road, Building 11, Modesto, California 95357.

27 C. “Hazardous Substance” has the same meaning as set forth in Health and Safety Code
28 section 25316.

- 1 D. “Hazardous Waste” has the same meaning as set forth in Health and Safety Code section
2 25117.
- 3 E. “Hazardous Waste Facility” has the same meaning as set forth in Health and Safety
4 Code section 25117.1
- 5 F. “Hazardous Waste Facility Permit” has the same meaning as set forth in California Code
6 of Regulations, title 22, section 66260.10.
- 7 G. “Hazardous Waste Management” has the same meaning as set forth in Health and Safety
8 Code section 25117.2.
- 9 H. “Include(s)” or “Including” shall mean “include(s) without limitation” or “including
10 without limitation,” respectively.
- 11 I. “Offsite Facility” has the same meaning as set forth in Health and Safety Code section
12 25117.11 and California Code of Regulations, title 22, section 66260.10.
- 13 J. “Onsite” or “Onsite Hazardous Waste Facility” has the same meaning as set forth in
14 Health and Safety Code section 25117.12 and California Code of Regulations, title 22,
15 section 66260.10.
- 16 K. “Non-RCRA Hazardous Waste” has the same meaning as set forth in Health and Safety
17 Code section 25117.9.
- 18 L. “Person” has the same meaning as set forth in Health and Safety Code section 25118.
- 19 M. “RCRA Hazardous Waste” has the same meaning as set forth in Health and Safety Code
20 section 25120.2.
- 21 N. “Secondary Containment” means a control measure to prevent the liquid contents of a
22 storage vessel, such as a railcar or other container of Hazardous Waste, from entering the
23 environment if there is an unintended or unanticipated spill or discharge from the storage
24 vessel, and which meets the requirements of California Code of Regulations, title 22,
25 section 66265.193.
- 26 O. “Storage Facility” has the same meaning as set forth in Health and Safety Code section
27 25123.3, subdivision (b).
- 28 P. “Transporter” has the same meaning as set forth in California Code of Regulations, title

1 22, section 66260.10.

2 Q. "UPA" has the same meaning as set forth in Health and Safety Code section 25123.7,
3 subdivision (d).

4 R. "Used oil" has the same meaning as set forth in Health and Safety code section 25250.1,
5 subdivision (a).

6 S. "VSP Program" shall mean DTSC's implementation of Health and Safety Code section
7 25200.21 and associated regulations at California Code of Regulations, title 22, sections
8 66271.50 through 66271.57.

9 **4. WAIVER OF HEARING AND TRIAL AND RIGHT TO APPEAL**

10 Pursuant to the Stipulation, the Parties waived any and all of their respective rights to a
11 hearing or trial on the claims alleged in the Complaint as well as any rights of appeal.

12 **5. DEEMED PROVEN VIOLATIONS**

13 The Parties agree that violations alleged in the Complaint are deemed admitted and deemed
14 proven for all purposes in any DTSC Action(s) and Proceeding(s). Such purposes may include
15 seeking enhanced penalties and/or to show a pattern, course of conduct, and/or a history of non-
16 compliance. In any DTSC Action(s) and Proceeding(s), Defendants shall not defend against,
17 challenge, or dispute DTSC's use or reliance on the violations alleged in the Complaint as being
18 deemed admitted and deemed proven. Defendants do not admit liability for any violations
19 alleged in the Complaint outside of DTSC Action(s) and Proceeding(s).

20 **6. NO PRECLUSION OF MORE STRINGENT REQUIREMENTS IN FUTURE**
21 **PERMITS OR AUTHORIZATIONS**

22 Nothing in this Judgment shall (1) affect DTSC's authority, as permitted by law, to make
23 any decision regarding Defendants' Hazardous Waste Facility Permit for the Facility, or any grant
24 of authorization by DTSC, including DTSC's imposing or requiring different or more stringent
25 requirements in Defendants' Hazardous Waste Facility Permit for this Facility, or any other grant
26 of authorization by DTSC; (2) be construed to preclude or prejudice DTSC from exercising its
27 discretion, as permitted by law, in any DTSC Action(s) and Proceeding(s); or (3) excuse COT
28 from meeting any different or more stringent requirements that may be imposed by applicable

1 laws, statutes, regulations, or other requirements or by any changes in the applicable laws,
2 statutes, regulations, or other requirements.

3 **7. INJUNCTIVE PROVISIONS**

4 Pursuant to the provisions of Health and Safety Code sections 25181 and 25184, absent
5 modification of the Facility’s Series C Standardized Hazardous Waste Facility Permit last
6 replaced on December 12, 2017, and last modified on March 19, 2019 (“Standardized Permit”)
7 (Attachment “A”) which are contrary to provisions herein, Defendants are permanently enjoined
8 to comply with the injunctive provisions in subparagraphs 7.1. through 7.9. at the Facility. The
9 Standardized Permit is the current version of the permit which is attached as Exhibit “A” to the
10 Complaint. For the purposes of this Judgment, these injunctive provisions shall be construed as a
11 standard or requirement issued or adopted pursuant to the HWCL.

12 7.1. Defendants shall not store Hazardous Waste in the Truck Side Loading and
13 Unloading Unit (Unit 2) in violation of Part IV, Unit 2, Special Conditions Section 1.

14 7.2. Defendants shall not accumulate more than 50,000 gallons of material, Hazardous
15 Waste, and non-Hazardous Waste at the Facility at any one time in violation of Standardized
16 Permit Section Part V, Special Conditions Section 1.

17 7.2.1. To clarify when the volumes of Hazardous Waste at the Facility count
18 toward the maximum volume limit in the Facility's Standardized Permit, DTSC issued two letters
19 to Defendants, both of which are attached to this Judgment as Attachment B and are incorporated
20 into this Judgment by reference.

21 7.3. Defendants shall not receive, transfer, or store RCRA Hazardous Waste in
22 violation of Standardized Permit Section Part V, Special Conditions Section 2.

23 7.4. Defendants shall not store Hazardous Waste containers outside of the permitted
24 storage area in violation of Standardized Permit Section Part V, Special Conditions Section 22.

25 7.5. Defendants shall not fail to maintain daily inspection logs which identify problems
26 and deficiencies observed at the Facility in violation of Standardized Permit Section, Part B
27 (Operations Plan), Section VII.

1 7.6. Defendants shall not comingle separate waste streams, Including used antifreeze
2 and oily water, in violation of Standardized Permit Section Part V, Special Conditions Section 18.

3 7.7. Defendants shall not dispose of Hazardous Waste in violation of Standardized
4 Permit Section Part V, Special Conditions Section 20.

5 7.8. Defendants shall maintain the secondary containment in the truck containment
6 area, Including the vertical concrete surfaces, with two coats of flexible epoxy as required by
7 Standardized Permit Section Part II, Section 5.

8 7.9. Defendants shall maintain all secondary containment areas for containers free of
9 spills and accumulated wastes in compliance with California Code of Regulations, title 22,
10 section 66264.175, subdivision (b)(5).

11 Notwithstanding any other provision in this Judgment, nothing in this Judgment shall
12 relieve or excuse Defendants from complying with all applicable requirements of the HWCL and
13 the Title 22 Regulations.

14 **8. LIABILITY OF DEFENDANTS FOR VIOLATIONS OF THE INJUNCTIVE**
15 **PROVISIONS**

16 Notwithstanding any other provision in this Judgment, Defendants shall be liable for any
17 violation of Paragraph 7 of this Judgment as the result of any conduct at the Facility by any of its
18 directors, officers, employees, representatives, contractors, or agents, or by any other person
19 acting under, by, or on behalf of, Defendants.

20 **9. SETTLEMENT PAYMENTS**

21 **9.1. Civil Penalties**

22 Defendants shall be liable for civil penalties in the total amount of FOUR HUNDRED
23 AND THIRTY THOUSAND DOLLARS (\$430,000.00). This amount reflects consideration of
24 Defendants' ability to pay civil penalties for the violations alleged in the Complaint.

25 **9.2. Payment**

26 Defendants shall pay the penalty of four hundred and thirty thousand dollars (\$430,000.00).
27 However, Defendants have represented and provided supporting evidence that they, jointly and
28 severally, do not have the financial resources to pay the full penalty amount in this matter at one

1 time. In reliance on Defendants' representations, Plaintiff agrees that Defendants shall pay the
2 penalty in twenty-four (24) monthly installments, subject to the acceleration provisions set forth
3 in Paragraphs 9.3 and 9.4 below. The first twenty-three (23) installments shall be payments of
4 \$18,000.00 per month, and the twenty-fourth and final payment shall be in the amount of
5 \$16,000.00. Payment of each installment shall be due on the 1st of each month beginning no
6 sooner than thirty (30) days after entry of this Judgment, and shall be made by cashier's check or
7 wire transfer made payable to "California Department of Toxic Substances Control" and bearing
8 the notation, Docket #HWCA20197543. All cashier's checks submitted pursuant to this
9 Judgment shall be sent to:

10 Cashier
11 Accounting Office, MS-21A
12 Department of Toxic Substances Control
13 P.O. Box 806
14 Sacramento, CA 95812-0806

15 An electronic copy or paper photocopy of each payment, and its successful wire transfer
16 confirmation or delivery service acknowledgement of receipt, shall be sent, at the same time, to
17 DTSC and Office of Attorney General personnel specified in Paragraph 10 ("Notices to Party
18 Representatives"), below. Upon request, the DTSC will provide its confidential wire transfer
19 information to Defendants.

18 **9.3. Acceleration Upon Sale or Merger of COT**

19 Should Defendants (Riverbank Oil Transfer, LLC, and/or California Oil Transfer, LLC)
20 be the subject of a sale, either an asset sale of Defendants' permit or a merger transaction in which
21 either or both Defendants merge with another company, the entire remaining unpaid balance of
22 the penalty set forth in Paragraph 9.2 above shall become due within fifteen (15) days of the
23 closing of the asset sale or merger transaction. Further, Defendants shall notify Plaintiff in
24 writing at least twenty (20) days prior to the closing date of any asset sale or merger transaction.

25 **9.4 Additional Penalties and Acceleration for Failure to Make Timely Payment**

26 Defendants shall be liable for a late payment of ONE THOUSAND DOLLARS (\$1,000.00)
27 for each calendar day that one or more payment(s) required pursuant to Paragraph 9.2 is late. A
28 payment is late if the date of the successful wire transfer confirmation from Defendants' financial

1 institution, or the date that the delivery service acknowledged receipt (e.g., USPS certification of
2 mailing or FedEx receipt) of the cashier's check, is on or after the second business day of the
3 month. In the event that any installment required by Paragraph 9.2 is not received by DTSC
4 within thirty (30) days from the date the payment is due, the entire remaining unpaid balance of
5 the penalty in Paragraph 9.2 shall become due fifteen (15) days thereafter.

6 **9.5. Obligations in the Event of Default**

7 In addition, in the event that Defendants fail to make a payment required within a deadline
8 required by this Judgment, the DTSC may bring a motion to enforce the payment of such
9 obligation and shall be entitled to statutory interest on the amount remaining unsatisfied pursuant
10 to Code Civil Procedure section 685.010 until full payment is made. The DTSC shall be entitled
11 to recover, from Defendants, its attorneys' fees and costs incurred for such action if DTSC is the
12 prevailing party.

13 **10. NOTICES TO PARTY REPRESENTATIVES**

14 All submissions and notices required by this Judgment shall be sent to:

15 **For DTSC:**

16 David Zonana
17 Supervising Deputy Attorney General
18 Office of the California Attorney General
19 1515 Clay Street, Suite 2000
20 Oakland, CA 94612
21 David.Zonana@doj.ca.gov

22 Vivian S. Murai
23 Senior Attorney
24 Department of Toxic Substances Control
25 1001 I Street, MS-23A
26 P.O. Box 806
27 Sacramento, CA 95812-0806
28 Vivian.Murai@dtsc.ca.gov

Denise Tsuji
Branch Chief
Enforcement and Emergency Response Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826

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For Defendants:

David Alvarez
Riverbank Oil Transfer, LLC
California Oil Transfer, LLC
PO Box 759
Riverbank, CA 95367

OR

David Alvarez
Riverbank Oil Transfer, LLC
California Oil Transfer, LLC
5300 Claus Road, Building 11
Modesto, California 95357

With copy to:

Jennifer Hartman King, Esq.
Hartman King PC
520 Capitol Mall, Suite 750
Sacramento, CA 95814
JHartmanKing@HartmanKingLaw.com

1 Any Party may change its notice name and address by informing the other Part(y/ies) in
2 writing, but no change is effective until it is received. All notices and other communications
3 required or permitted under this Judgment that are properly addressed as provided in this
4 paragraph are effective upon delivery if delivered personally or by overnight mail, or are effective
5 seven (7) calendar days following deposit in the United States mail, postage prepaid, if delivered
6 by mail.

7 **11. MATTERS COVERED AND RESERVED CLAIMS**

8 11.1. Except as otherwise provided in this Judgment, upon the Effective Date, this
9 Judgment is a final and binding resolution and settlement of the “Covered Matters.” The Covered
10 Matters are all claims, violations, and causes of action specifically alleged by DTSC in the
11 Complaint in this matter against Defendants, and any claim, violation, or cause of action that
12 DTSC could have brought against Defendants pursuant to the HWCL or the Title 22 Regulations
13 based on its inspections of the Facility during 2016 and 2017. Any other claim, violation, or
14 cause of action that is not a Covered Matter is a “Reserved Claim.” The provisions of Paragraph
15 11.1 are effective on the Effective Date of this Judgment, provided however, that the continuing
16 effect of the provisions of Paragraph 11.1 is expressly conditioned on Defendants’ full payment
17 of the amounts due under this Judgment as set forth in Paragraph 9.

18 11.2. Reserved Claims Include any claim or cause of action against Defendants under
19 the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42
20 U.S.C. § 9601 et seq.), the California Hazardous Substance Account Act (State Superfund, Health
21 & Saf. Code, § 25300 et seq.), and Health and Safety Code section 25187, subdivision (b)
22 (corrective action concerning a release of hazardous waste or a hazardous constituent into the
23 environment) for performance of cleanup, corrective action, or response action for any actual past
24 or future releases, spills, or disposals of Hazardous Waste or Hazardous Substances at or from the
25 Facility. Reserved Claims also Include claims based on a failure of Defendants to meet a
26 requirement of the Judgment, including any efforts by DTSC to enforce this Judgment.

27 11.3. DTSC reserves the right to pursue any Reserved Claim and, except as otherwise
28 set forth in this Judgment, Defendants reserve the right to defend against any Reserved Claim.

1 11.4. Defendant shall not assert that DTSC’s decision not to pursue any Reserved Claim
2 as part of this action constitutes claim-splitting, estoppel, or raise defenses based on laches, or any
3 other lack of timeliness, except for the statute of limitations. Defendants expressly reserve the
4 right to assert any and all other defenses to any Reserved Claim.

5 11.5 In any DTSC Action(s) and Proceeding(s), Defendants shall not defend against,
6 challenge, or dispute (1) DTSC's use of or reliance on the fact that a violation has been deemed
7 admitted and deemed proven pursuant to Paragraph 5; (2) the VSP Program score assigned to that
8 violation; or (3) DTSC's classification of that violation.

9 11.6 DTSC further reserves all rights (1) to enforce this Judgment; and (2) to use, and
10 rely on, the violations deemed admitted or deemed proven, without any need for further testimony
11 or evidence, for any purpose, in any DTSC Action(s) or Proceeding(s).

12 **12. DEFENDANTS’ COVENANT NOT TO SUE**

13 Defendants covenant not to pursue any civil or administrative claims against DTSC or
14 against any agency of the State of California, or against any of their respective officers,
15 employees, representatives, agents, or attorneys arising out of any Covered Matter (unless such
16 entities pursue claims against Defendants, in which case Defendants reserve all rights to assert
17 any rights, claims, and defenses they may have arising out of the facts and law of that new or
18 separate matter).

19 **13. DTSC’S ENFORCEMENT OF THE JUDGMENT**

20 DTSC has authority to enforce this Judgment. DTSC may move the Court for relief for any
21 violation of any provision of this Judgment including contempt, additional injunctive provisions,
22 or additional penalties consistent with the provisions of this Judgment and applicable law. Such
23 motion, and any motion by any Party to enforce or address the terms of this Judgment, shall be
24 brought pursuant with the terms of Paragraph 20.1.

25 **14. NO WAIVER OF RIGHT TO ENFORCE**

26 A decision by DTSC not to enforce a provision of this Judgment shall neither be deemed a
27 waiver of such provision nor in any way affect the validity of this Judgment, or DTSC’s
28 enforcement authority. The decision of DTSC not to enforce any such provision shall not

1 preclude DTSC from later enforcing the same or any other provision of this Judgment. Except as
2 expressly provided in this Judgment, Defendants retain all rights, claims, and defenses allowed by
3 law to any such later enforcement.

4 **15. JUDGMENT HAS NO EFFECT ON INDEPENDENT EXERCISE OF**
5 **AUTHORITY**

6 Except as expressly provided in this Judgment, nothing in this Judgment is intended nor
7 shall it be construed to preclude DTSC, or any state, county, city, or local agency, department,
8 board or entity, or any UPA from exercising its authority under any law, statute or regulation.
9 The imposition of penalties by motion pursuant to Paragraph 13 is in addition to any separate
10 enforcement action that may be taken by DTSC, or any state, county, city or local agency,
11 department, board, or entity, or any UPA for violations of applicable environmental protection
12 laws and/or the implementing regulations.

13 **16. TERMINATION OF INJUNCTIVE PROVISIONS**

14 Only after this Judgment has been in effect for five (5) years, and Defendants have paid all
15 amounts due under this Judgment, Defendants may move the Court (following a forty-five (45)
16 day notice served on DTSC by overnight mail) to terminate the injunctive provisions of this
17 Judgment. In order to terminate the injunctive provisions of this Judgment, Defendants must
18 show substantial compliance with the terms of this Judgment since its date of entry. For the
19 purposes of this paragraph, “substantial compliance” requires actual compliance with respect to
20 the substance essential to every reasonable objective of each statutory and regulatory obligation
21 set forth in Paragraph 7 of this Judgment. After notice has been served on DTSC, the Parties
22 agree that they shall meet and confer within fifteen (15) days of the notice, to discuss the
23 proposed motion and Defendants’ compliance with the terms of the Judgment, and to determine if
24 a stipulation for termination can be reached. In the event that such motion is filed, none of the
25 injunctive provisions set forth in Paragraph 7 of the Judgment shall terminate pending the Court’s
26 final ruling on Defendants’ motion. DTSC may file an opposition to such motion within forty-
27 five (45) days of receipt of Defendants’ noticed motion. Defendants may file their reply within
28 twenty-one (21) days of service of any opposition by DTSC. DTSC’s failure to oppose the

1 motion shall not constitute a waiver or estoppel of DTSC’s authority to otherwise enforce any
2 violation of law and shall have no evidentiary effect. The Parties agree that the Court may grant
3 Defendants’ motion upon determining that Defendants have substantially complied with the
4 provisions of this Judgment. In the event the injunctive provisions of this Judgment are
5 terminated upon motion by Defendants, the termination shall have no effect on Defendants’
6 obligation to comply with all applicable requirements imposed by statute, regulation, ordinance,
7 or other legal authority, including those set forth in the DTSC letters attached as Exhibit A.

8 **17. NECESSITY FOR WRITTEN COMMUNICATIONS FROM DTSC**

9 All notices, approvals, and decisions of DTSC under the terms of this Judgment shall be
10 communicated to Defendants in writing. No oral advice, guidance, suggestions, or comments by
11 employees of DTSC to representatives or persons acting on behalf of Defendants regarding any
12 matter covered in this Judgment shall be construed to relieve Defendants of its obligations under
13 this Judgment.

14 **18. NON-LIABILITY OF DTSC FOR ACTS OR OMISSIONS OF DEFENDANTS IN**
15 **COMPLYING WITH THE JUDGMENT**

16 DTSC shall not be liable for any injury or damage to persons or property resulting from acts
17 or omissions by Defendants or their directors, officers, employees, agents, representatives, or
18 contractors in carrying out activities pursuant to this Judgment, nor shall DTSC be held as a party
19 to or guarantor of any contract entered into by Defendants or their directors, officers, employees,
20 agents, representatives, or contractors in carrying out the requirements of this Judgment.

21 **19. APPLICATION OF JUDGMENT**

22 This Judgment shall apply to and be binding upon DTSC and upon Defendants, including
23 their respective successors and assigns.

24 **20. CONTINUING JURISDICTION**

25 20.1. This Court shall retain continuing jurisdiction to interpret and enforce the terms of
26 this Judgment and to address any other matters or disputes arising out of, or regarding, this
27 Judgment, including any provision of this Judgment declared or found to be illegal,
28 unenforceable, ineffective, or void (hereinafter collectively “Void”). The Parties shall meet and

1 confer at least fourteen (14) calendar days prior to the filing of any application or motion relating
2 to this Judgment, and the Parties shall negotiate in good faith in an effort to resolve any dispute
3 without judicial intervention. If the Parties are unable to resolve their dispute after meet-and-
4 confer discussions, either Party may move this Court pursuant to Code of Civil Procedure section
5 1005 seeking a resolution of that dispute by the Court. In such a situation involving a Void
6 provision, the Court resolving the dispute shall modify this Judgment so as to effect the Parties'
7 original intent as closely as possible and to the fullest extent possible without any Void
8 provisions. Until such time as the Court approves a stipulated modification to the Judgment or
9 resolves any dispute involving a Void provision pursuant to this Paragraph and Paragraph 24, the
10 remainder of this Judgment, and the application of such provision(s) to the Parties or
11 circumstances other than those as to which are determined Void, shall not be impaired or
12 otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by
13 applicable law.

14 20.2. The meet and confer provisions of Paragraph 21.1. shall not apply to civil or
15 administrative proceedings that are independent of any requirement established by this Judgment,
16 or when such action or proceeding is necessary to address an imminent threat to public health or
17 the environment. For the purposes of the exception to the meet and confer provisions, the
18 determination that an action or proceeding is necessary to address an imminent threat to public
19 health or the environment shall be at the Department's sole discretion and shall not be subject to
20 judicial review.

21 **21. INTERPRETATION**

22 This Judgment was drafted equally by the Parties. The Parties agree that the rule of
23 construction holding that ambiguity is construed against the drafting party shall not apply to the
24 interpretation of this Judgment.

25 **22. INTEGRATION**

26 This Judgment embodies the entire agreement between the Parties and may not be amended
27 or supplemented except as provided in this Judgment. No oral representations have been made or
28 relied upon other than as expressly set forth herein.

1 **23. MODIFICATION OF JUDGMENT**

2 The Judgment may be modified only on noticed motion filed and served in accordance with
3 Code of Civil Procedure section 1005, by one of the Parties with approval of the Court, or upon
4 written consent by all of the Parties and the approval of the Court.

5 **24. COSTS AND ATTORNEYS' FEES**

6 Except as otherwise provided in this Judgment, each Party shall bear its own costs and
7 attorneys' fees.

8 **25. EFFECTIVE DATE OF JUDGMENT**

9 The date that the Judgment is entered by this Court is the Effective Date.
10

11 **IT IS SO ORDERED, ADJUDGED AND DECREED**

12 Original signed by Judge Brad Seligman

13 Dated: 09/01/2022

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JUDGE OF THE SUPERIOR COURT

15 **Brad Seligman / Judge**
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