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10 UNITED STATES
11 ENVIRONMENTAL PROTECTION AGENCY
12 REGION IX

13 **In the Matter of:**

14 **ResiPro, LLC**

15 **Respondent.**

Docket No. TSCA-09-2023-0059

**CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO
40 C.F.R. §§ 22.13 AND 22.18**

16 **CONSENT AGREEMENT**

17 The United States Environmental Protection Agency (“EPA”), Region IX, and ResiPro,
18 LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent
19 Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this
20 matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

21 **I. AUTHORITY, JURISDICTION, AND PARTIES**

22 1. This is a civil administrative penalty action brought against Respondent pursuant to
23 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violations
24 of Section 409 of TSCA, 15 U.S.C. § 2689, for failing to comply with Sections 402 and 406 of
25 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing regulations promulgated at
26 40 C.F.R. Part 745, Subpart E – Residential Property Renovation (“Subpart E”).
27

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1 8. “Painted surface” means a component surface covered in whole or in part with paint or
2 other surface coatings. 40 C.F.R. § 745.83.

3 9. “Pamphlet” means the EPA pamphlet titled “Renovate Right: Important Lead Hazard
4 Information for Families, Child Care Providers and Schools” developed under Section 406(a) of
5 TSCA for use in complying with Section 406(b) of TSCA, or any State or Tribal pamphlet
6 approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose.
7
8 40 C.F.R. § 745.83.

9 10. “Person” means any natural or judicial person including any individual, corporation,
10 partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate
11 body; and any department, agency, or instrumentality of the Federal Government.
12
13 40 C.F.R. § 745.83.

14 11. “Renovation” means the modification of any existing structure, or portion thereof, that
15 results in the disturbance of painted surfaces, unless that activity is part of an abatement as
16 defined by 40 C.F.R. § 745.223. The term “renovation” includes (but is not limited to): the
17 removal, modification or repair of painted surfaces or painted components (e.g., modification of
18 painted doors, surface restoration, window repair, surface preparation activity (such as sanding,
19 scraping, or other such activities that may generate paint dust)); the removal of building
20 components (e.g., walls, ceilings, plumbing windows); weatherization projects (e.g., cutting
21 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
22 thresholds to install weatherstripping), and interim controls that disturb painted surfaces. The
23 term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. § 745.83.
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26 12. “Renovator” means any individual who either performs or directs workers who perform
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1 renovations. A certified renovator is a renovator who has successfully completed a renovator
2 course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. § 745.83.

3 13. “Target housing” means any housing constructed prior to 1978, except housing for the
4 elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than
5 six years of age resides or is expected to reside in such housing). Section 401(17) of TSCA,
6 15 U.S.C. § 2681(17).

7 14. No more than 60 days before beginning renovation activities in any residential dwelling
8 unit of target housing, the firm performing the renovation must provide the owner of the unit
9 with the “pamphlet,” and either obtain from the owner a written acknowledgment that the owner
10 has received the “pamphlet” or obtain a certificate of mailing the “pamphlet” at least 7 days prior
11 to the renovation. 40 C.F.R. § 745.84(a)(1).

12 15. Firms performing renovations must ensure that a certified renovator is assigned to each
13 renovation performed by the firm and discharges all of the certified renovator responsibilities
14 identified in 40 C.F.R. § 745.90. 40 C.F.R. § 745.89(d)(2).

15 16. Firms performing renovations must retain documentation of compliance with the
16 requirements of 40 C.F.R. § 745.85, including documentation that a certified renovator was
17 assigned to the project; that the certified renovator provided on-the-job training for workers used
18 on the project; that the certified renovator performed or directed workers who performed all of
19 the work practice tasks described in 40 C.F.R. § 745.85(a); and that the certified renovator
20 performed the post-renovation cleaning verification described in 40 C.F.R. § 745.85(b).

21 40 C.F.R. § 745.86(b)(6).

22 17. Firms must post signs clearly defining the work area and warning occupants and other
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1 persons not involved in renovation activities to remain outside of the work area.

2 40 C.F.R. § 745.85(a)(1).

3 18. Before beginning the renovation, the firm must contain the work area by closing windows
4 and doors in the work area and ensuring doors are covered with plastic sheeting or other
5 impermeable material. Doors used as an entrance to the work area must be covered with plastic
6 sheeting or other impermeable material in a manner that allows workers to pass through while
7 confining dust and debris to the work area. 40 C.F.R. § 745.85(a)(2)(i)(C).

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9 19. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty Inflation
10 Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation
11 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize civil penalties not to exceed
12 \$46,989 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that occurred
13 after November 2, 2015, where penalties are assessed on or after January 6, 2023.

14 15 **III. ALLEGATIONS**

16 20. At all times relevant to this CAFO, Respondent was a “person,” as that term is defined at
17 40 C.F.R. § 745.83.

18 21. At all times relevant to this CAFO, Respondent was a “firm,” as that term is defined at
19 40 C.F.R. § 745.83.

20 22. The properties located at 1309 S. Mansfield Ave., Los Angeles, CA (“Mansfield
21 Property”); 751 W. 111th St., Los Angeles, CA (“111th St. Property”); 1602 Montevideo Lane,
22 San Jose, CA (“Montevideo Property”); 22055 W. Ballinger St., Chatsworth, CA (“Ballinger
23 Property”); 23612 Atmore Ave., Carson, CA (“Atmore Property”); and 38508 Lemsford Ave.,
24 Palmdale, CA (“Lemsford Property”) (collectively “the Properties”) are “target housing” as that
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1 term is defined at Section 401 of TSCA, 15 U.S.C. § 2681.

2 23. During the period of approximately January 2019 to June 2020, Respondent performed
3 “renovations,” as that term is defined at 40 C.F.R. § 745.83, for compensation at the Mansfield
4 Property (“Mansfield Renovation”).
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6 24. During the period of approximately December 2018 to June 2019, Respondent performed
7 “renovations,” as that term is defined at 40 C.F.R. § 745.83, for compensation at the 111th St.
8 Property (“111th St. Renovation”).
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10 25. During the period of approximately July 2019 to December 2019, Respondent performed
11 “renovations,” as that term is defined at 40 C.F.R. § 745.83, for compensation at the Montevideo
12 Property (“Montevideo Renovation”).

13 26. During the period of approximately July 2019 to September 2019, Respondent performed
14 “renovations,” as that term is defined at 40 C.F.R. § 745.83, for compensation at the Ballinger
15 Property (“Ballinger Renovation”).
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17 27. During the period of approximately August 2019 to January 2020, Respondent performed
18 “renovations,” as that term is defined at 40 C.F.R. § 745.83, for compensation at the Atmore
19 Property (“Atmore Renovation”).
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21 28. During the period of approximately February 2019 to June 2019, Respondent performed
22 “renovations,” as that term is defined at 40 C.F.R. § 745.83, for compensation at the Lemsford
23 Property (“Lemsford Renovation”).
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25 29. With respect to the Mansfield Renovation, 111th St. Renovation, Montevideo Renovation,
26 Ballinger Renovation, Atmore Renovation, and Lemsford Renovation, (collectively “the
27 Renovations”) Respondent did not qualify for any of the exceptions involving a lead-free
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1 determination identified in 40 C.F.R. § 745.82(a).

2 30. All of the Properties were vacant during the time Respondent performed the Renovations.

3 INFORMATION DISTRIBUTION REQUIREMENTS

4 31. Respondent did not provide the owner(s) of the Mansfield Property, 111th St. Property,
5 Montevideo Property, Ballinger Property, Atmore Property, and Lemsford Property the
6 “pamphlet,” nor receive a written acknowledgment that the owner(s) received the “pamphlet,” or
7 obtain a certificate of mailing for the “pamphlet” at least 7 days prior to the Mansfield
8 Renovation, 111th St. Renovation, Montevideo Renovation, Ballinger Renovation, Atmore
9 Renovation, and Lemsford Renovation.
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12 32. Respondent’s failure to provide the owner(s) of the Properties the “pamphlet” and receive
13 a written acknowledgment that the owner(s) received the “pamphlet” or obtain a certificate of
14 mailing for the “pamphlet” at least 7 days prior to the Renovations, constitute six violations of
15 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.
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17 FIRM RESPONSIBILITIES

18 33. Respondent did not ensure that a certified renovator discharged all of the certified
19 renovator responsibilities identified in 40 C.F.R. § 745.90 for the Mansfield Renovation, 111th
20 St. Renovation, Montevideo Renovation, Ballinger Renovation, Atmore Renovation, and
21 Lemsford Renovation.
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23 34. Respondent’s failure to ensure that a certified renovator discharged all of the certified
24 renovator responsibilities identified in 40 C.F.R. § 745.90 for the Renovations, constitute six
25 violations of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.
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1 or other impermeable material in a manner that allowed worked to pass through while confining
2 dust and debris to the work area during the Mansfield Renovation, 111th St. Renovation,
3 Montevideo Renovation, Ballinger Renovation, Atmore Renovation, and Lemsford Renovation.

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5 40. Respondent's failure to contain the work area and cover doors with plastic sheeting or
6 other impermeable material during the Renovations, constitute six violations of
7 40 C.F.R. § 745.85(a)(2)(i)(C) and Section 409 of TSCA, 15 U.S.C. § 2689.

8 **IV. RESPONDENT'S ADMISSIONS**

9 41. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,

10 Respondent:

- 11
12 a. admits the jurisdictional allegations contained herein;
13 b. neither admits nor denies the specific factual allegations contained herein;
14 c. consents to the assessment of the stated civil penalty and to any conditions
15 specified herein;
16 d. waives any right to contest the allegations contained herein; and
17 e. waives the right to appeal the proposed Final Order accompanying this Consent
18 Agreement.

19 **V. CIVIL ADMINISTRATIVE PENALTY**

20 42. Respondent agrees to the assessment of a penalty in the amount of ONE HUNDRED
21 ONE THOUSAND FOUR HUNDRED AND FOURTY-THREE DOLLARS (\$101,443) as final
22 settlement of the civil claims against Respondent arising under TSCA as alleged in Section III of
23 this CAFO.

24 43. Respondent shall pay the assessed penalty no later than thirty (30) calendar days from the
25 effective date of this CAFO. The assessed penalty shall be paid by certified or cashier's check,
26 including the name and docket number of this matter, payable to "Treasurer, United States of
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1 America,” or paid by one of the other methods listed below and sent as follows:

2 **Regular Mail:**

3 U.S. Environmental Protection Agency
4 Fines and Penalties
5 Cincinnati Finance Center
6 PO Box 979077
7 St. Louis, MO 63197-9000

8 **Wire Transfers:**

9 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with
10 the following information:
11 Federal Reserve Bank of New York
12 ABA = 021030004
13 Account = 68010727
14 SWIFT address = FRNYUS33
15 33 Liberty Street
16 New York, NY 10045
17 Field Tag 4200 of the Fedwire message should read “D 68010727
18 Environmental Protection Agency”

19 **Overnight Mail:**

20 U.S. Bank
21 1005 Convention Plaza
22 Mail Station SL-MO-C2GL
23 ATTN Box 979077
24 St. Louis, MO 63101

25 **ACH** (also known as REX or remittance express):

26 US Treasury REX/Cashlink ACH Receiver ABA = 051036706
27 Account Number: 310006, Environmental Protection Agency
28 CTX Format Transaction Code 22 - checking
Physical location of US Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX) 1-866-234-5681

29 **Online Payment:**

30 This payment option can be accessed from the information below:
31 www.pay.gov
32 Enter “sfo1.1” in the search field
33 Open form and complete required fields

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1 If clarification regarding a particular method of payment remittance is needed, contact the EPA
2 Cincinnati Finance Center at (513) 487-2091.

3 Concurrently, a copy of each check or notification that the payment has been made by one of the
4 other methods listed above, including proof of the date payment was made, shall be sent with
5 a transmittal letter indicating Respondent's name, the case title, and the docket number to the
6 following addressees:

8 Regional Hearing Clerk:
9 R9HearingClerk@epa.gov

10 Christopher Rollins:
11 rollins.christopher@epa.gov

12 44. Payment of the above civil administrative penalty shall not be used by Respondent or any
13 other person as a tax deduction from Respondent's federal, state, or local taxes.

14 45. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph
15 42 by the manner and deadlines specified in Paragraph 43, then the entire remaining balance of
16 the assessed penalty shall immediately become due and payable. Respondent also shall pay to
17 EPA a stipulated penalty of \$100 per day for each day that payment is late in addition to the
18 assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all
19 accrued stipulated penalties are paid and shall become due and payable upon written request by
20 EPA. In addition, failure to pay the civil administrative penalty by the manner and deadlines
21 specified in Paragraph 43 may lead to any or all of the following actions:

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- 24 a. The debt being referred to a credit reporting agency, a collection agency, or to the
25 Department of Justice for filing of a collection action in the appropriate United
26 States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection
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1 action, the validity, amount, and appropriateness of the assessed penalty and of
2 this CAFO shall not be subject to review.

3 b. The debt being collected by administrative offset (i.e., the withholding of money
4 payable by the United States to, or held by the United States for, a person to
5 satisfy the debt the person owes the Government), which includes, but is not
6 limited to, referral to the Internal Revenue Service for offset against income tax
7 refunds. 40 C.F.R. Part 13, Subparts C and H.

8 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii)
9 suspend or disqualify Respondent from doing business with EPA or engaging in
10 programs EPA sponsors or funds. 40 C.F.R. § 13.17.

11 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,
12 interest, penalties charges, and administrative costs will be assessed against the
13 outstanding amount that Respondent owes to EPA for Respondent's failure to pay
14 in full the assessed civil administrative penalty by the deadlines specified in
15 Paragraph 43. Interest will be assessed at an annual rate that is equal to the rate of
16 current value of funds to the United States Treasury (i.e., the Treasury tax and
17 loan account rate) as prescribed and published by the Secretary of the Treasury in
18 the Federal Register and the Treasury Fiscal Requirements Manual Bulletins.
19 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6%
20 per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting
21 Respondent's overdue debt will be based on either actual or average cost incurred,
22 and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition,
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1 if this matter is referred to another department or agency (e.g., the Department of
2 Justice, the Internal Revenue Service), that department or agency may assess its
3 own administrative costs, in addition to EPA's administrative costs, for handling
4 and collecting Respondent's overdue debt.
5

6 **VI. RESPONDENT'S CERTIFICATION**

7 46. In executing this CAFO, Respondent certifies that it is now fully in compliance with the
8 federal regulations promulgated at 40 C.F.R. Part 745, Subpart E.
9

10 **VII. RETENTION OF RIGHTS**

11 47. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability
12 for federal civil penalties for the violations and facts specifically alleged in Section III of this
13 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability
14 for violations of any provision of any federal, state, or local law, statute, regulation, rule,
15 ordinance, or permit not specifically alleged in Section III of this CAFO; or (ii) any criminal
16 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
17 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to
18 address any violation of this CAFO or any violation not specifically alleged in Section III of this
19 CAFO.
20

21 48. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to
22 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
23 permits.
24

25 **VIII. ATTORNEYS' FEES AND COSTS**

26 49. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
27

28 In the Matter of: *ResiPro, LLC*
Consent Agreement and Final Order

1 proceeding.

2 **IX. EFFECTIVE DATE**

3 50. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective
4 on the date that the final order contained in this CAFO, having been approved and issued by
5 either the Regional Judicial Officer or Regional Administrator, is filed.
6

7 **X. BINDING EFFECT**

8 51. The undersigned representative of Complainant and the undersigned representative of
9 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
10 of this CAFO and to bind the party he or she represents to this CAFO.
11

12 52. The provisions of this CAFO shall apply to and be binding upon Respondent and its
13 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
14 and assigns.
15

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17 ///

1 FOR RESPONDENT, RESIPRO, LLC:

2 4.25.23

Scott Miller

3 DATE

Scott Miller, Esq.
Senior Counsel and Risk Officer
ResiPro, LLC

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7

8 FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX:

9 June 2, 2023

MATTHEW SALAZAR

Digitally signed by MATTHEW SALAZAR
Date: 2023.06.02 13:27:04 -07'00'

10 DATE

Matt Salazar, PE
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

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In the Matter of: *ResiPro, LLC*
Consent Agreement and Final Order

1 **FINAL ORDER**

2 Complainant and Respondent, having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this Consent Agreement and Final Order (Docket No.
4 TSCA-09-2023-0059) be entered, and that Respondent shall pay a civil administrative penalty
5 in the amount of ONE HUNDRED ONE THOUSAND FOUR HUNDRED AND FOURTY-
6 THREE DOLLARS (\$101,443), and comply with the terms and conditions set forth in the
7 Consent Agreement. This Consent Agreement and Final Order shall become effective upon
8 filing.
9

10 **BEATRICE** Digitally signed by
11 **E WONG** BEATRICE WONG
Date: 2023.06.07
11:05:17 -07'00'

12 _____
13 Beatrice Wong Date
14 Regional Judicial Officer
15 U.S. EPA, Region IX
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In the Matter of: *ResiPro, LLC*
Consent Agreement and Final Order

1 **CERTIFICATE OF SERVICE**

2 I certify that the original of the fully executed Consent Agreement and Final Order in the matter
3 of ResiPro, LLC (Docket No. TSCA-09-2023-0059) was filed with the Regional Hearing Clerk,
4 U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and
5 correct copy of the same was sent to the following parties via electronic mail:

6 **Respondent:**

Alex P. Basilevsky, Partner
Obermayer, Rebmann, Maxwell & Hippel, LLP
Centre Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102-2101
(215) 665-3094
Alex.Basilevsky@obermayer.com

11 **Complainant:**

Nathaniel Moore
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Moore.Nathaniel@epa.gov

16 **PONLY TU**

Digitally signed by
PONLY TU
Date: 2023.06.07
14:51:59 -07'00'

18 _____
Ponly J. Tu Date
Regional Hearing Clerk
U.S. EPA - Region IX