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U.S. EPA. REGION IX
REGIONAL HEARING OFFICE

1
2 UNITED STATES
3 ENVIRONMENTAL PROTECTION AGENCY
4 REGION IX
5 75 HAWTHORNE STREET
6 SAN FRANCISCO, CA 94105

7 In the Matter of:)
8) Docket No. TSCA-09-2012-0004
9 BEKS Group, LLC, Becker)
10 Equities, LLC, and Meadows) CONSENT AGREEMENT
11 Apartment Properties, LLC,) AND FINAL ORDER
12) PURSUANT TO 40 C.F.R.
13) §§ 22.13 and 22.18
14 Respondents.)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX
17 ("EPA"), and BEKS Group, LLC, Becker Equities, LLC, and Meadows
18 Apartment Properties, LLC ("Respondents") agree to settle this
19 matter and consent to the entry of this Consent Agreement and
20 Final Order ("CAFO"), which simultaneously commences and
21 concludes this matter in accordance with 40 C.F.R. §§ 22.13(b)
22 and 22.18(b).

23 A. AUTHORITY AND PARTIES

24 1. This is a civil administrative penalty action instituted
25 against Respondents pursuant to Section 16(a) of the Toxic
26 Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for
27 violation of Section 1018 of Title X of the Residential Lead-
28 Based Paint Hazard Reduction Act of 1992 ("Section 1018"), 42
U.S.C. § 4852d, and federal regulations promulgated to implement
Section 1018 at 40 C.F.R. Part 745, Subpart F. Violation of
Section 1018 through its implementing regulations at 40 C.F.R.
Part 745, Subpart F constitutes violation of Section 409 of TSCA,
15 U.S.C. § 2689.

1 2. Complainant is the Director of the Communities and
2 Ecosystems Division, EPA, Region IX, who has been duly delegated
3 the authority to bring this action and to sign a consent
4 agreement settling this action.

5 3. Respondents own and/or manage residential properties
6 located in Las Vegas, Nevada.

7 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

8 4. 40 C.F.R. Part 745, Subpart F implements the provisions
9 of Section 1018 that impose certain disclosure requirements
10 concerning lead-based paint and/or lead-based paint hazards upon
11 the sale or lease of target housing.

12 5. "Target housing" means any housing constructed prior to
13 1978, except housing for the elderly or persons with disabilities
14 (unless any child who is less than 6 years of age resides or is
15 expected to reside in such housing) or any 0-bedroom dwelling.
16 40 C.F.R. § 745.103.

17 6. "Lessor" means any entity that offers target housing for
18 lease, rent or sublease, including but not limited to
19 individuals, partnerships, corporations, trusts, government
20 agencies, housing agencies, Indian tribes, and nonprofit
21 organizations. 40 C.F.R. § 745.103.

22 7. "Lessee" means any entity that enters into an agreement
23 to lease, rent, or sublease target housing, including but not
24 limited to individuals, partnerships, corporations, trusts,
25 government agencies, housing agencies, Indian tribes, and
26 nonprofit organizations. 40 C.F.R. § 745.103.

1 8. Before a lessee is obligated under any contract to lease
2 target housing, the lessor shall provide the lessee with an EPA-
3 approved lead hazard information pamphlet. 40 C.F.R. §
4 745.107(a)(1).

5 9. Each contract to lease target housing shall include,
6 as an attachment or within the contract, a Lead Warning Statement
7 containing language provided in 40 C.F.R. § 745.113(b)(1). 40
8 C.F.R. § 745.113(b)(1).

9 10. Each contract to lease target housing shall include a
10 statement by the lessor disclosing the presence of known lead-
11 based paint and/or lead-based paint hazards in the target housing
12 being leased or indicating no knowledge of the presence of lead-
13 based paint and/or lead-based paint hazards. 40 C.F.R. §
14 745.113(b)(2).

15 11. Each contract to lease target housing shall include a
16 list of any records or reports available to the lessor pertaining
17 to lead-based paint and/or lead-based paint hazards in the target
18 housing that have been provided to the lessee or indicate that no
19 such records or reports are available. 40 C.F.R. §
20 745.113(b)(3).

21 12. Each contract to lease target housing shall include a
22 statement by the lessee affirming receipt of the information set
23 forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard
24 information pamphlet required under 15 U.S.C. § 2686. 40 C.F.R.
25 § 745.113(b)(4).

26 13. Each contract to lease target housing shall include the
27

1 signatures of the lessors, agents, and lessees certifying to the
2 accuracy of their statements, to the best of their knowledge,
3 along with the dates of signature. 40 C.F.R. § 745.113(b)(6).

4 14. As provided at 40 C.F.R. §§ 745.118(e), failure to
5 comply with 40 C.F.R. §§ 745.107 or 745.113 is a violation of
6 Section 409 of TSCA, 15 U.S.C. § 2689, and the penalty for each
7 such violation shall not be more than \$11,000 for violations
8 occurring on or before January 12, 2009 and not more than \$16,000
9 for violations occurring thereafter, pursuant to the Civil
10 Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19,
11 which implements the Federal Civil Penalties Inflation Adjustment
12 Act of 1990, Pub. L. 101-410.

13 C. ALLEGATIONS

14 15. EPA has jurisdiction over this matter pursuant to
15 Section 1018.

16 16. At all times relevant to this matter, Respondents were
17 "lessors" of residential properties located at 301 North Decatur
18 Boulevard, 305 North Decatur Boulevard, 309 North Decatur
19 Boulevard, 313 North Decatur Boulevard, 317 North Decatur
20 Boulevard, 321 North Decatur Boulevard, 325 North Decatur
21 Boulevard, 425 North Decatur Boulevard, 500 North Decatur
22 Boulevard, 4800 Kansas Avenue, and 4801 Iowa Avenue in Las Vegas,
23 Nevada, as that term is defined at 40 C.F.R. § 745.103.

24 17. At all times relevant to this matter, the residential
25 properties located at 301 North Decatur Boulevard, 305 North
26 Decatur Boulevard, 309 North Decatur Boulevard, 313 North Decatur
27

1 Boulevard, 317 North Decatur Boulevard, 321 North Decatur
2 Boulevard, 325 North Decatur Boulevard, 425 North Decatur
3 Boulevard, 500 North Decatur Boulevard, 4800 Kansas Avenue, and
4 4801 Iowa Avenue in Las Vegas, Nevada were "target housing," as
5 that term is defined at 40 C.F.R. § 745.103.

6 18. Respondents entered into 41 leases of the residential
7 properties referenced in Paragraphs 16 and 17 for occupancies
8 greater than 100 days or 100 days or less where lease renewals or
9 extensions could occur on or around the dates listed below:

10	<u>Address</u>	<u>Date of Lease</u>
11	301 N. Decatur Blvd #A	11/4/08
12	301 N. Decatur Blvd #B	4/1/10
13	301 N. Decatur Blvd #C	6/3/08
14	301 N. Decatur Blvd #D	2/6/08
15	301 N. Decatur Blvd #D	10/31/08
16	305 N. Decatur Blvd #A	8/23/07
17	305 N. Decatur Blvd #B	8/29/07
18	305 N. Decatur Blvd #C	11/5/07
19	305 N. Decatur Blvd #D	12/4/09
20	309 N. Decatur Blvd #A	12/15/08
21	309 N. Decatur Blvd #B	9/29/08
22	309 N. Decatur Blvd #B	3/2/09
23	309 N. Decatur Blvd #C	6/10/09
24	309 N. Decatur Blvd #D	1/7/08
25	313 N. Decatur Blvd #A	10/22/08
26	313 N. Decatur Blvd #A	4/20/09

27

28 In the Matter of BEKS Group, LLC, Becker Equities,
LLC and Meadows Apartment Properties, LLC

1	<u>Address</u>	<u>Date of Lease</u>
2	313 N. Decatur Blvd #C	11/25/08
3	313 N. Decatur Blvd #D	6/29/09
4	317 N. Decatur Blvd #A	9/29/08
5	317 N. Decatur Blvd #B	8/14/08
6	317 N. Decatur Blvd #D	12/4/07
7	317 N. Decatur Blvd #D	8/5/08
8	321 N. Decatur Blvd #A	8/2/07
9	321 N. Decatur Blvd #A	12/1/08
10	321 N. Decatur Blvd #B	9/3/08
11	325 N. Decatur Blvd #A	1/8/10
12	325 N. Decatur Blvd #C	1/4/08
13	425 N. Decatur Blvd #2	11/26/08
14	425 N. Decatur Blvd #4	9/18/08
15	500 N. Decatur Blvd #1	8/25/09
16	500 N. Decatur Blvd #2	5/30/08
17	500 N. Decatur Blvd #4	2/2/08
18	500 N. Decatur Blvd #4	1/19/09
19	4800 Kansas Ave #A	3/1/10
20	4800 Kansas Ave #C	7/1/07
21	4800 Kansas Ave #C	11/1/08
22	4800 Kansas Ave #D	9/4/09
23	4801 Iowa Ave #A	5/18/07
24	4801 Iowa Ave #B	6/12/08
25	4801 Iowa Ave #C	5/8/08
26	4801 Iowa Ave #D	11/1/07

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LLC and Meadows Apartment Properties, LLC

1 19. At the times that Respondents entered into the 41
2 leases referenced in Paragraph 18, Respondents failed to provide
3 the lessees with an EPA-approved lead hazard information
4 pamphlet, as required by 40 C.F.R. § 745.107(a)(1).

5 20. At the times that Respondents entered into the 41
6 leases referenced in Paragraph 18, Respondents failed to include,
7 as an attachment to the leases or within the leases, a Lead
8 Warning Statement containing language provided in 40 C.F.R. §
9 745.113(b)(1), as required by 40 C.F.R. § 745.113(b)(1).

10 21. At the times that Respondents entered into the 41
11 leases referenced in Paragraph 18, Respondents failed to include
12 in the leases a statement by Respondents disclosing the presence
13 of known lead-based paint and/or lead-based paint hazards in the
14 units being leased or indicating no knowledge of the presence of
15 lead-based paint and/or lead-based paint hazards, as required by
16 40 C.F.R. § 745.113(b)(2).

17 22. At the times that Respondents entered into the 41
18 leases referenced in Paragraph 18, Respondents failed to include
19 in the leases a list of any records or reports available to
20 Respondents pertaining to lead-based paint and/or lead-based
21 paint hazards in the units that had been provided to the lessees
22 or indicate that no such records or reports are available, as
23 required by 40 C.F.R. § 745.113(b)(3).

24 23. At the times that Respondents entered into the 41
25 leases referenced in Paragraph 18, Respondents failed to include
26 in the leases a statement by the lessees affirming receipt of the
27

1 information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and
2 the lead hazard information pamphlet required under 15 U.S.C. §
3 2686, as required by 40 C.F.R. § 745.113(b)(4).

4 24. At the times that Respondents entered into the 41
5 leases referenced in Paragraph 18, Respondents failed to include
6 the signatures of Respondents and the lessees certifying to the
7 accuracy of their statements, to the best of their knowledge,
8 along with the dates of signature, as required by 40 C.F.R. §
9 745.113(b)(6).

10 25. Each of Respondents' failures to comply with 40 C.F.R.
11 §§ 745.107 and 745.113, as set forth in Paragraphs 18 through 24,
12 constitutes a separate violation of Section 409 of TSCA, 15
13 U.S.C. § 2689, which can be assessed a penalty of up to \$11,000
14 per violation for violations occurring on or before January 12,
15 2009 and up to \$16,000 per violation for violations occurring
16 thereafter.

17 D. RESPONDENTS' ADMISSIONS

18 26. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
19 purpose of this proceeding, Respondents (i) admit that EPA has
20 jurisdiction over the subject matter of this CAFO and over
21 Respondents; (ii) neither admit nor deny the specific factual
22 allegations contained in Section I.C of this CAFO; (iii) consent
23 to any and all conditions specified in this CAFO and to the
24 assessment of the civil administrative penalty under Section I.E
25 of this CAFO; (iv) waive any right to contest the allegations
26 contained in Section I.C of this CAFO; and (v) waive the right to

1 appeal the proposed final order contained in this CAFO.

2 E. CIVIL ADMINISTRATIVE PENALTY

3 27. Respondents agree to the assessment of a penalty in the
4 amount of THIRTY-FOUR THOUSAND, FIVE HUNDRED DOLLARS (\$34,500) as
5 final settlement of the civil claims against Respondents arising
6 under TSCA as alleged in Section I.C of this CAFO.

7 28. Respondents shall pay the assessed penalty no later
8 than thirty (30) days after the effective date of the CAFO.
9 The assessed penalty shall be paid by **certified or cashier's**
10 **check**, payable to "Treasurer, United States of America," or paid
11 by one of the other methods listed below and sent as follows:

12 Regular Mail:
13 U.S. Environmental Protection Agency
14 Fines and Penalties
15 Cincinnati Finance Center
16 PO Box 979077
17 St. Louis, MO 63197-9000

18 Wire Transfers:
19 Wire transfers must be sent directly to the Federal Reserve Bank
20 in New York City with the following information:

21 Federal Reserve Bank of New York
22 ABA = 021030004
23 Account = 68010727
24 SWIFT address = FRNYUS33
25 33 Liberty Street
26 New York, NY 10045
27 Field Tag 4200 of the Fedwire message should read "D 68010727
28 Environmental Protection Agency"

29 Overnight Mail:
30 U.S. Bank
31 1005 Convention Plaza
32 Mail Station SL-MO-C2GL
33 ATTN Box 979077
34 St. Louis, MO 63101
35 ///

36 In the Matter of BEKS Group, LLC, Becker Equities,
37 LLC and Meadows Apartment Properties, LLC

1 ACH (also known as REX or remittance express):

2 Automated Clearinghouse (ACH) for receiving US currency
3 PNC Bank
4 808 17th Street, NW
5 Washington, DC 20074
6 ABA = 051036706
7 Transaction Code 22 - checking
8 Environmental Protection Agency
9 Account 31006
10 CTX Format

11 On Line Payment:

12 This payment option can be accessed from the information below:

13 www.pay.gov
14 Enter "sfol.1" in the search field
15 Open form and complete required fields

16 If clarification regarding a particular method of payment
17 remittance is needed, contact the EPA Cincinnati Finance Center
18 at 513-487-2091.

19 Concurrently, a copy of the check or notification that the
20 payment has been made by one of the other methods listed above,
21 including proof of the date payment was made, shall be sent with
22 a transmittal letter indicating Respondents' names, the case
23 title, and the docket number to:

24 a) Regional Hearing Clerk (ORC-1)
25 Office of Regional Counsel
26 U.S. Environmental Protection Agency, Region IX
27 75 Hawthorne Street
28 San Francisco, California 94105

29 b) Manager
30 Toxics Office (CED-4)
31 Communities and Ecosystems Division
32 U.S. Environmental Protection Agency, Region IX
33 75 Hawthorne Street
34 San Francisco, CA 94105

35 29. Payment of the above civil administrative penalty shall
36 not be used by Respondents or any other person as a tax deduction
37 from Respondents' federal, state, or local taxes.

38 In the Matter of BEKS Group, LLC, Becker Equities,
39 LLC and Meadows Apartment Properties, LLC

1 30. If Respondents fail to pay the assessed civil
2 administrative penalty specified in Paragraph 27 by the deadline
3 specified in Paragraph 28, then Respondents shall pay to EPA a
4 stipulated penalty of \$500 per day in addition to the assessed
5 penalty. Stipulated penalties shall accrue until such time as
6 the assessed penalty and all accrued stipulated penalties are
7 paid and shall become due and payable upon written request by
8 EPA. In addition, failure to pay the civil administrative
9 penalty by the deadline specified in Paragraph 28 may lead to any
10 or all of the following actions:

11 a. The debt being referred to a credit reporting agency, a
12 collection agency, or to the Department of Justice for filing of
13 a collection action in the appropriate United States District
14 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such
15 collection action, the validity, amount, and appropriateness of
16 the assessed penalty and of this CAFO shall not be subject to
17 review.

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

24 c. EPA may (i) suspend or revoke Respondents' licenses or other
25 privileges; or (ii) suspend or disqualify Respondents from doing
26 business with EPA or engaging in programs EPA sponsors or funds.
27 40 C.F.R. § 13.17.

1 d. In accordance with the Debt Collection Act of 1982 and 40
2 C.F.R. Part 13 interest, penalties charges, and administrative
3 costs will be assessed against the outstanding amount that
4 Respondents owe to EPA for Respondents' failure to pay the civil
5 administrative penalty by the deadline specified in Paragraph 28.
6 Interest will be assessed at an annual rate that is equal to the
7 rate of current value of funds to the United States Treasury
8 (i.e., the Treasury tax and loan account rate) as prescribed and
9 published by the Secretary of the Treasury in the Federal
10 Register and the Treasury Fiscal Requirements Manual Bulletins.
11 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed
12 monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).
13 Administrative costs for handling and collecting Respondents'
14 overdue debt will be based on either actual or average cost
15 incurred, and will include both direct and indirect costs. 40
16 C.F.R. § 13.11(b). In addition, if this matter is referred to
17 another department or agency (e.g., the Department of Justice,
18 the Internal Revenue Service), that department or agency may
19 assess its own administrative costs, in addition to EPA's
20 administrative costs, for handling and collecting Respondents'
21 overdue debt.

22 F. RESPONDENTS' CERTIFICATION

23 31. In executing this CAFO, Respondents certify that they
24 are now fully in compliance with Section 1018 and federal
25 regulations promulgated to implement Section 1018 at 40 C.F.R.
26 Part 745, Subpart F.

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1 G. RETENTION OF RIGHTS

2 32. In accordance with 40 C.F.R. § 22.18(c), this CAFO only
3 resolves Respondents' liability for federal civil penalties for
4 the violations and facts specifically alleged in Section I.C of
5 this CAFO. Nothing in this CAFO is intended to or shall be
6 construed to resolve (i) any civil liability for violations of
7 any provision of any federal, state, or local law, statute,
8 regulation, rule, ordinance, or permit not specifically alleged
9 in Section I.C of this CAFO; or (ii) any criminal liability. EPA
10 specifically reserves any and all authorities, rights, and
11 remedies available to it (including, but not limited to,
12 injunctive or other equitable relief or criminal sanctions) to
13 address any violation of this CAFO or any violation not
14 specifically alleged in Section I.C of this CAFO.

15 33. This CAFO does not exempt, relieve, modify, or affect
16 in any way Respondents' duty to comply with all applicable
17 federal, state, and local laws, regulations, rules, ordinances,
18 and permits.

19 H. ATTORNEYS' FEES AND COSTS

20 34. Each party shall bear its own attorneys' fees, costs,
21 and disbursements incurred in this proceeding.

22 I. EFFECTIVE DATE

23 35. In accordance with 40 C.F.R. §§ 22.18(b)(3) and
24 22.31(b), this CAFO shall be effective on the date that the final
25 order contained in this CAFO, having been approved and issued by
26 either the Regional Judicial Officer or Regional Administrator,
27 is filed.

1 J. BINDING EFFECT

2 36. The undersigned representative of Complainant and the
3 undersigned representative of Respondents each certifies that he
4 or she is fully authorized to enter into the terms and conditions
5 of this CAFO and to bind the party he or she represents to this
6 CAFO.

7 37. The provisions of this CAFO shall apply to and be
8 binding upon Respondents and their officers, directors,
9 employees, agents, trustees, servants, authorized
10 representatives, successors, and assigns.

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In the Matter of BEKS Group, LLC, Becker Equities,
LLC and Meadows Apartment Properties, LLC

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1 FOR RESPONDENT, BEKS GROUP, LLC

2
3 8-1-12
DATE

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Brian T. Becker
Manager
BEKS Group, LLC

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6 FOR RESPONDENT, BECKER EQUITIES, LLC

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8 8-1-12
DATE

Ernest A. Becker, Jr.
Manager
Becker Equities, LLC

10 FOR RESPONDENT, MEADOWS APARTMENT PROPERTIES, LLC

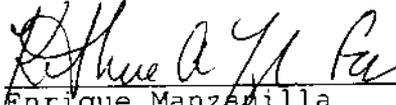
11
12 8-1-12
DATE

Ernest A. Becker, Jr.
Manager
Meadows Apartment Properties, LLC

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27 In the Matter of BEKS Group, LLC, Becker Equities,
LLC and Meadows Apartment Properties, LLC

1 FOR COMPLAINANT, EPA REGION IX:

2 9/13/2012
3 DATE


4 Enrique Manzanilla
5 Director
6 Communities and Ecosystems Division
7 U.S. ENVIRONMENTAL PROTECTION AGENCY,
8 REGION IX

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In the Matter of BEKS Group, LLC, Becker Equities,
LLC and Meadows Apartment Properties, LLC

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II. FINAL ORDER

Complainant and Respondents, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2012-0004) be entered, and that Respondents shall pay a civil administrative penalty in the amount of THIRTY-FOUR THOUSAND, FIVE HUNDRED DOLLARS (\$34,500) and comply with the terms and conditions set forth in the Consent Agreement. This Consent Agreement and Final Order shall become effective upon filing.

09/25/12
DATE


STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"), Docket Number TSCA-09-2012-0004, was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, and that true and correct copies of the CAFO were sent to the Respondents at the following addresses:

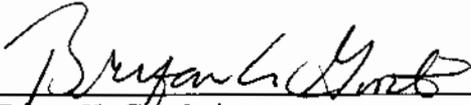
Mr. Ernest Becker, Jr.
Becker Equities, LLC and
Meadows Apartment Properties, LLC
8090 S. Durango Drive, #11
Las Vegas, NV 89113

Certified Mail No: 7010 2780 0000 8389 2997

and

Mr. Brian Becker
BEKS Group, LLC
8090 S. Durango Drive, #11
Las Vegas, NV 89113

Certified Mail No: 7010 2780 0000 8389 3000



Bryan K. Goodwin

Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

9/26/10
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

By Certified Mail, Return Receipt Requested: 7010 2780 0000 8389 2997

Mr. Ernest Becker, Jr.
Becker Equities, LLC and Meadows Apartment Properties, LLC
8090 S. Durango Drive, #115
Las Vegas, NV 89113

Re: In the Matter of BEKS Group, LLC, Becker Equities, LLC, and Meadows Apartment
Properties, LLC
Consent Agreement and Final Order

Docket No. TSCA-09-2012-0004

Date: 9/14/12

Dear Respondent:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with EPA Region 9. Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case.

If you have any questions, please contact Jean Prijatel at 415-947-4167.

Sincerely,

A handwritten signature in black ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla

Director

Communities and Ecosystems Division

Enclosures