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12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN JOSE DIVISION**

15 SAN FRANCISCO BAYKEEPER, a California
 16 non-profit corporation,

17 Plaintiff,

18 v.

19 MUOI PHAN dba B2 AUTO DISMANTLER,

20 Defendant.

Case No.: 5:15-cv-00208

~~[PROPOSED]~~ CONSENT DECREE

(Federal Water Pollution Control Act,
 33 U.S.C. §§ 1251 *et seq.*)

1 **CONSENT DECREE**

2 WHEREAS, San Francisco Baykeeper, Inc. (“Baykeeper”) is a non-profit public benefit
3 corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and
4 natural resources of the San Francisco Bay and other area waters;

5 WHEREAS, Muoi Phan doing business as B2 Auto Dismantler (“B2 Auto”) operates an
6 automobile dismantling facility located at 245 and 275 Leo Avenue, San Jose, California 95112,
7 WDID #2 43IO12880 (the “Facility”) (Baykeeper and B2 Auto are collectively referred to as the
8 “Parties” to this Consent Decree (“Decree”));

9 WHEREAS, stormwater discharges associated with industrial activity at the Facility are
10 regulated pursuant to the National Pollutant Discharge Elimination System (“NPDES”) General Permit
11 No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 92-12-DWQ (as
12 amended by Water Quality Order 97-03-DWQ), issued pursuant to Section 402 of the Federal Water
13 Pollution Control Act, 33 U.S.C. §1342 (hereinafter “Industrial Stormwater Permit”). These industrial
14 activities include, *inter alia*, the dismantling and wrecking of used motor vehicles to recycle and resell
15 parts;

16 WHEREAS, effective July 15, 2015, stormwater discharges associated with industrial activity
17 will be regulated pursuant to the National Pollutant Discharge Elimination System (“NPDES”),
18 General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order
19 No. 2014-0057-DWQ, issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342
20 (hereinafter “New General Permit”);

21 WHEREAS, the Industrial Stormwater Permit includes the following requirements for all
22 permittees, including B2 Auto: (1) develop and implement a stormwater pollution prevention plan
23 (“SWPPP”); (2) control pollutant discharges using, as appropriate, best available technology
24 economically achievable (“BAT”) or best conventional pollutant control technology (“BCT”) to
25 prevent or reduce pollutants; (3) implement BAT and BCT through the development and application
26 of structural and non-structural Best Management Practices (“BMPs”), which must be included and
27 updated in the SWPPP; and (4) when necessary, implement additional BMPs to prevent or reduce any
28 pollutants that are causing or contributing to any exceedance of water quality standards;

1 WHEREAS, on October 22, 2014, Baykeeper served B2 Auto, the Administrator of the United
2 States Environmental Protection Agency (“EPA”) Region IX, the Executive Director of the State
3 Water Resources Control Board (“State Water Board”), the Executive Officer of the Regional Water
4 Quality Control Board (“Regional Water Board”), the U.S. Attorney General, and the Administrator of
5 the EPA with a notice of intent to file suit (“60-Day Notice”) under Section 505(b)(1)(A) of the
6 Federal Water Pollution Control Act (“Clean Water Act” or “the Act”), 33 U.S.C. § 1365(b)(1)(A),
7 alleging violations of the Act and the Industrial Stormwater Permit at the Facility;

8 WHEREAS, on December 19, 2014, B2 Auto implemented a revised storm water pollution
9 prevention plan (“SWPPP”) at the Facility that included new and modified BMPs for controlling and
10 reducing the levels of potential pollutants in the Facility’s storm water discharges;

11 WHEREAS, on January 14, 2015, Baykeeper filed a complaint (“Complaint”) alleging certain
12 violations of the Act and the Industrial Stormwater Permit at the Facility;

13 WHEREAS, B2 Auto denies all allegations and claims contained in the Complaint and reserves
14 all rights and defenses with respect to such allegations and claims;

15 WHEREAS, B2 Auto denies the occurrence of the violations alleged in the Notice Letter and
16 maintains that B2 Auto has complied at all times with the provisions of the Industrial Stormwater
17 Permit and the Clean Water Act;

18 WHEREAS, the Parties believe it is in their mutual interest and choose to resolve in full
19 Baykeeper’s allegations in the 60-Day Notice and Complaint through settlement and avoid the cost and
20 uncertainties of further litigation;

21 WHEREAS, this Decree shall be submitted to the United States Department of Justice for the 45-
22 day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall thereafter be submitted for entry
23 as an Order of the Court, the date of which Order shall be referred to herein as the “Court Approval
24 Date”;

25 NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE SETTLING
26 PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

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1 **I. BEST MANAGEMENT PRACTICES**

2 1. In order to further reduce or further prevent pollutants associated with industrial activity from
3 discharging via stormwater to the waters of the United States, B2 Auto shall implement additional
4 appropriate structural and non-structural BMPs, as described more fully below, in compliance with the
5 requirements of the Industrial Stormwater Permit, the New General Permit, and the Clean Water Act.

6 2. **Site Map:** No later than April 1, 2015, B2 Auto shall update the Site Map included in the
7 Facility SWPPP. The Site Map shall identify property boundaries, ground type (pervious or
8 impervious), berms and the materials they are composed of, any permanent structures and features,
9 known or suspected storm drain inlets, discharge point(s), sampling point(s) identified in the Facility
10 SWPPP (hereinafter “Designated Sampling Point(s)”), and all other physical structures or items
11 relevant under the Industrial Stormwater Permit and pursuant to this Decree. While the Decree is in
12 effect, if B2 Auto makes any changes to the Designated Sampling Points or discharge points at the
13 Facility, B2 Auto shall update the SWPPP within forty-five (45) days and submit the revised SWPPP
14 to Baykeeper within ten (10) business days thereafter, in accordance with Paragraph 6.

15 3. **Non-Structural Best Management Practices.** Beginning on March 9, 2015 (unless otherwise
16 noted), B2 Auto shall implement the following non-structural BMPs:

17 a. **Storm Drain Inlet/Catch Basin Best Management Practices:**

18 i. Storm Drain Inlet/Designated Sampling Point Inspections: Between March 9
19 and March 16, 2015, and between September 1 and October 1 of each year, B2 Auto shall inspect any
20 storm drain inlets, catch basins, Designated Sampling Point, discharge points, filtration/treatment
21 devices, and other BMPs in place at the Facility. B2 Auto shall promptly clean, as needed, each drain
22 inlet, catch basin, Designated Sampling Point, discharge point, filtration/treatment device, and other
23 BMPs in order to remove any accumulated dust, sediment, solids, or debris. During the dry season
24 (June 1-September 30), B2 Auto shall continue the practice of covering inlets with an impervious
25 device.

26 ii. Storm Drain Inlet/Designated Sampling Point Maintenance and Cleaning: On a
27 weekly basis between October 1 and May 31 of each year (“Wet Season”), B2 Auto shall inspect all
28 storm drain inlets, catch basins, Designated Sampling Points, discharge points, filtration/treatment

1 devices, and other BMPs in place at the Facility to ensure that they are not in a condition that would
2 materially impair their efficacy, and clean out accessible deposited sediment or debris. B2 Auto shall
3 properly dispose of any dust, sediment, debris, or other removed pollutants.

4 iii. Log of Storm Drain Inlet/Designated Sampling Point Inspections, Maintenance
5 and Cleaning: B2 Auto shall prepare and maintain a log of the Storm Drain Inlet/Designated
6 Sampling Point Inspections, Maintenance and Cleaning described herein (“Maintenance Log”). The
7 Maintenance Log shall indicate the employee or contractor who completed the maintenance activity
8 and when it was completed. The Maintenance Log shall be made available for inspection by
9 Baykeeper at any site inspection or otherwise within three (3) business days advance request by
10 Baykeeper.

11 b. **Site Sweeping**: B2 Auto shall sweep the accessible paved areas of the Facility by hand
12 or vacuum at least two (2) times per week during the Wet Season and in advance of each forecasted
13 rain event. B2 Auto shall keep a log or checklist, as appropriate, of the on-site sweeping activity
14 performed (“Sweeping Log”), and shall direct employees and/or contractors to accurately complete the
15 Sweeping Log. The Sweeping Log shall indicate the employee or contractor who conducted the
16 sweeping, the location of the sweeping, and the dates the sweeping activities occurred. The Sweeping
17 Log shall be made available for inspection by Baykeeper at any site inspection or within three (3)
18 business days of a request by Baykeeper.

19 c. **Vehicle Dismantling**: All vehicles shall be dismantled under cover; dismantling shall
20 include, at a minimum, disconnecting all hoses and wires; draining all oil and all other fluids from the
21 vehicle to the extent feasible; and removing the engine and all other mechanical parts in the vehicle
22 that may contribute to oil and grease or heavy metals in the Facility’s stormwater discharges.

23 d. **Abandoned or Inutile Equipment Storage and Removal**: B2 Auto shall either store
24 under cover or, as soon as feasible, remove from the Facility all abandoned or broken equipment or
25 materials no longer considered for future use that have the potential to serve as the source for pollutant
26 loading.

27 e. **Vehicle and Equipment Management**: B2 Auto shall implement BMPs to reduce or
28 minimize pollutant release from equipment such as dismantled and non-dismantled vehicles, forklifts,

1 trucks, and other heavy equipment that are parked or stored in industrial areas of the Facility from
2 which stormwater discharges. Such BMPs shall include placing drip pans under equipment stored or
3 parked for a week or longer; weekly inspections for evidence of leaks from such equipment; and
4 prompt clean-up of spills, drips, or leaks from such equipment. Any spilled substances and absorbent
5 materials used in cleaning up spills shall be disposed of in accordance with all local, state, and federal
6 laws and regulations.

7 f. **Vehicle and Equipment Maintenance:** B2 Auto shall not conduct routine (*i.e.*, non-
8 emergency) vehicle or movable equipment maintenance or repair at the Facility in outdoor, uncovered
9 areas from which stormwater discharges during rainfall events.

10 g. **Training:** By April 1, 2015, and annually thereafter, and within thirty (30) days of
11 hiring of new employees, B2 Auto shall conduct training for all employees to explain the requirements
12 of the Facility's SWPPP to the extent applicable to such employee. Training shall focus on the
13 employee's role in implementing various stormwater control measures including, for example,
14 implementation of BMPs, sweeping, vehicle maintenance, or facility inspections. Training shall be
15 conducted in the relevant language to the extent that such employee is not reasonably able to
16 comprehend training in English. If and when appropriate, B2 Auto shall integrate any new training
17 requirements resulting from this Decree into the Facility SWPPP. B2 Auto shall also update the
18 SWPPP, if and when appropriate, to identify the positions responsible for carrying out stormwater
19 management, monitoring, sampling, and SWPPP implementation.

20 4. **Structural Best Management Practices:** By March 9, 2015, B2 Auto shall implement the
21 following structural BMPs at each storm drain inlet at the Facility:

22 a. **Sock Filters:** During the Wet Season, B2 Auto shall place weighted sock filters
23 designed to treat heavy metals and/or oil and grease, specifically Filtrexx FilterSoxx with MetaLoxx,
24 around each storm drain inlet. If B2 Auto proposes to change the type of sock filters, the proposed
25 sock filter shall be as effective or more effective than the Filtrexx filters at reducing the specific
26 pollutants discharged from the Facility, and B2 Auto shall amend the SWPPP in accordance with
27 Paragraph 6.

28 b. **In-Situ Storm Drain Inlet Filters:** B2 Auto shall install storm drain inlet filters,

1 specifically inlet filters designed and fabricated by Revel Environmental Manufacturing (REM), at
2 each storm drain inlet at the Facility. If B2 Auto proposes to change the type of storm drain inlet
3 filter, the proposed storm drain inlet filter shall be as effective or more effective than the REM filters
4 at reducing the specific pollutants discharged from the Facility, and B2 Auto shall amend the SWPPP
5 in accordance with Paragraph 6.

6 **5. Maintenance of BMP Structural Controls:** During the Term of the Decree, B2 Auto shall
7 maintain all structural BMPs at the Facility in good operating condition and shall promptly repair any
8 damaged or degraded structural BMPs. At a minimum, B2 Auto shall replace all structural BMPs in
9 accordance with the manufacturer's instructions.

10 **6. Amendment of SWPPP:** No later than April 1, 2015, B2 Auto shall amend the Facility
11 SWPPP to incorporate the requirements and BMPs set forth in this Section I. During the Term of the
12 Decree, B2 Auto shall amend the SWPPP within forty-five (45) days to reflect any changes to the
13 discharge points or Designated Sampling Points at the Facility, changes in personnel responsible for
14 stormwater management, or additions or modifications to the BMPs. Whenever B2 Auto amends the
15 SWPPP during the Term of this Decree, other than in accordance with an Action Plan prepared and
16 submitted to Baykeeper pursuant to Paragraphs 12-16, B2 Auto shall submit the updated SWPPP to
17 Baykeeper within ten (10) business days of the update. Baykeeper shall have thirty (30) days from
18 receipt of the amended SWPPP to propose any changes to the amended portions of the SWPPP. B2
19 Auto shall consider each of Baykeeper's proposed changes to the Action Plan and accept them or
20 timely request, in accordance with Paragraph 25, a meet and confer to discuss. Compliance with the
21 SWPPP, as amended in accordance with this Paragraph provision, shall at all times be a requirement
22 of this Decree.

23 **7. Additional BMPs:** The BMPs included in this Section constitute a preliminary approach to
24 stormwater management at the Facility for the first year of the Decree. If, after implementing these
25 BMPs, the sampling conducted in accordance with Section II indicates that the Facility's stormwater
26 discharges continue to exceed the Target Levels in Exhibit 1, or otherwise do not meet water quality
27 standards, B2 Auto shall propose additional BMPs in an Action Plan prepared in accordance with
28 Paragraph 12.

1 **II. SAMPLING, MONITORING, INSPECTION & REPORTING**

2 8. **Sampling Program - Stormwater:** During the 2014-15 Wet Season and throughout the Term
3 of this Decree, B2 Auto shall collect and analyze stormwater samples from all of its Designated
4 Sampling Points, indicated on the Site Map prepared pursuant to Paragraph 2, according to the
5 following sampling schedule:

6 a. B2 Auto shall collect and analyze samples from all Designated Sampling Points during
7 the first three (3) storm events of the Wet Season that meet the conditions of Section B.5.b under the
8 Industrial Stormwater Permit or, after the 2014-15 Wet Season, that meet the requirements for a
9 “Qualifying Storm Event,” as defined in Section XI.B.1 of the New General Permit. Each stormwater
10 sample must represent post-filtration conditions (i.e. collected after flowing through the drop-inlet
11 filter) and be analyzed for the presence of each of the parameters listed on the Sampling Chart attached
12 hereto as Exhibit 1, except B2 Auto is not required to analyze samples for mercury if mercury is not
13 detected in the first sample analyzed under this Decree.

14 b. If B2 Auto is unable to take a sample from any of the Designated Sampling Points
15 during any of the first three storm events of the Wet Season, B2 Auto shall continue to sample from
16 any subsequent storm events until three samples have been collected from each Designated Sampling
17 Point in that Wet Season.

18 c. In the event that B2 Auto is unable to collect three samples from each Designated
19 Sampling Point in a Wet Season, B2 Auto shall explain in writing in the End-of-Season Summary
20 under Paragraph 11 why it was unable to collect the required sample(s).

21 d. Should industrial processes materially change at the Facility, B2 Auto shall conduct
22 sampling for any additional toxic priority pollutants listed in 40 C.F.R. § 131.38 likely to be present in
23 the Facility’s stormwater discharges in significant quantities as a result of the changed industrial
24 processes. B2 Auto shall notify Baykeeper of any such changes within thirty (30) days of such a
25 change.

26 9. **Certified Lab:** Except for pH samples, which will be measured with an on-site calibrated pH
27 meter in order to meet the 15 minute holding time requirement, B2 Auto shall have all stormwater
28 samples collected pursuant to this Decree delivered to a California state certified environmental

1 laboratory for analysis within the time needed for analysis according to laboratory method allowable
2 hold times. The laboratory shall thereafter conduct analysis sufficient to detect individual constituents
3 at or below the levels set forth in the attached Exhibit 1.

4 **10. Sample Result Reporting:** During the Term of this Decree, B2 Auto shall provide complete
5 results from sampling and analysis to Baykeeper within ten (10) calendar days of receipt of the
6 laboratory report from each sampling event.

7 **11. End-of-Season Summary:** By July 15 following each Wet Season that occurs during the
8 Term of this Decree, B2 Auto shall prepare and send to Baykeeper an End-of-Season Summary that
9 includes: (1) a summary chart with all of the sample results from the previous Wet Season, including
10 the constituent concentration(s) from Designated Sampling Point sample(s) collected at the Facility
11 exceeding the Target Levels in Exhibit 1 (“Exceedance(s)”); and (2) identification of any new BMP(s)
12 that B2 Auto has implemented or will implement.

13 **12. Action Plan:** If any stormwater sample result during a Wet Season exceeds any Target Level
14 set forth in Exhibit 1 (“Exceedance(s)”), B2 Auto shall submit an Action Plan in addition to an End-
15 of-Season Summary by July 15 following each Wet Season that occurs during the Term of the Decree.

16 **13. Contents of Action Plan:** If an Action Plan is required, it shall include the following:
17 a. The possible sources of the Exceedance(s) during the applicable Wet Season;
18 b. A proposal for and evaluation of new site-specific BMPs designed to reduce pollutants
19 in future stormwater discharges to the Target Levels in Exhibit 1 or to achieve BAT and BCT; and
20 c. A schedule to implement any revised and/or additional BMPs by the earliest practicable
21 time, and no later than October 1 of the next Wet Season. In any Action Plan, B2 Auto shall consider
22 appropriate structural BMPs as necessary to adequately address its Exceedances.

23 **14. Baykeeper Review of Action Plan:** Baykeeper shall have thirty (30) days from receipt to
24 propose revisions to the Action Plan. Within thirty (30) days of receiving Baykeeper’s proposed
25 revisions, B2 Auto shall consider each of Baykeeper’s recommended revisions to the Action Plan and
26 accept them or timely request, in accordance with Paragraph 25, a meet and confer to discuss.

27 **15. Implementation of Action Plan:** B2 Auto shall implement the Action Plan(s) adopted
28 pursuant to this Decree as an obligation of this Decree.

1 **16. Amendment of Facility SWPPP:** Within forty-five (45) days after BMPs set forth in an
2 Action Plan pursuant to this Decree are implemented, B2 Auto shall amend the Facility SWPPP to
3 include all BMP revisions or additions not otherwise already implemented and included in the
4 SWPPP. Within ten (10) business days thereafter, B2 Auto shall provide Baykeeper with a copy of
5 such revised SWPPP.

6 **17. Evaluation of BMPs:** During each Wet Season during the Term of the Decree, B2 Auto shall
7 evaluate the Facility BMPs included in this Decree and any current or previous Action Plans, and, if
8 B2 Auto has exceeded Target Levels, make reasonable efforts to reduce the concentrations to Target
9 Levels or otherwise meet BAT or BCT, as appropriate, for the remainder of the Wet Season. B2 Auto
10 shall use the results from subsequent stormwater samples as they become available to assist with its
11 ongoing evaluation of the effectiveness of BMPs.

12 **18. Stipulated Payments:** B2 Auto shall pay the following stipulated payments during the Term
13 of this Decree, unless B2 Auto invokes dispute resolution under Paragraph 25, and Baykeeper or the
14 Court determines that B2 Auto's failure to comply was reasonably excusable and timely cured.

15 a. \$500 for each failure to collect a sample required under this Decree;

16 b. \$100 per business day (Monday through Friday, excluding state and federal holidays)
17 after the report due date for each failure to timely submit any document, report or other
18 communication required under this Decree; and

19 c. \$500 per business day past the due date that B2 Auto fails to submit any payments due
20 under Paragraphs 21-23 of this Decree.

21 d. Any stipulated payments described above shall be paid to Baykeeper within thirty (30)
22 days of notification of the failure to comply, or, if B2 Auto has invoked dispute resolution under
23 Paragraph 25, within thirty (30) days of the dispute resolution process terminating in favor of
24 Baykeeper. Stipulated payments calculated on a daily basis shall not accrue during the pendency of a
25 dispute resolution process under Paragraph 25.

26 **19. Site Access:** During the Term of this Decree, B2 Auto shall permit representatives of
27 Baykeeper to perform one (1) physical inspection per year of the Facility during operating hours ("Site
28 Inspection"). Baykeeper shall provide B2 Auto three (3) business days notice in advance of such Site

1 Inspections, except that B2 Auto shall have the right to deny access if circumstances would make the
2 inspection unduly burdensome and pose significant interference with business operations or any
3 party/attorney, or the safety of individuals. In such case, B2 Auto shall specify at least two (2) dates
4 within the two (2) weeks thereafter upon which a physical inspection by Baykeeper may proceed.
5 Baykeeper shall comply with all safety instructions provided to Baykeeper by B2 Auto staff during all
6 Site Inspections. During Site Inspections, Baykeeper shall be allowed to inspect and sample any
7 stormwater discharges, logs, and take photos and/or videos. All sampling shall be conducted by
8 Baykeeper staff trained to take water quality samples, with a split sample provided to both Baykeeper
9 and B2 Auto at the time of sampling. Baykeeper shall provide B2 Auto with a copy of all sampling
10 reports, photographs and/or video within a reasonable time after the site inspection, not to exceed
11 fourteen (14) days after Baykeeper's receipt of any sampling reports from split samples, and seven (7)
12 days after the site inspection, for photographs and/or video.

13 20. **Reports:** During the Term of this Decree, B2 Auto shall provide Baykeeper with a copy of all
14 documents required to be submitted to the Regional Water Board or the State Water Board concerning
15 the Facility's compliance with the Industrial Stormwater Permit or, when it comes into effect, with the
16 New General Permit. Such documents and reports shall be transmitted to Baykeeper via electronic
17 mail at the time the documents are submitted to the Regional Water Board or State Water Board.

18 **III. MITIGATION, FEES AND COSTS**

19 21. **Environmental Mitigation Funding:** As mitigation for the alleged violations set forth in
20 Baykeeper's Notice and Complaint, within thirty (30) days of the Court Approval Date, B2 Auto shall
21 pay the sum of eight thousand dollars (\$8,000) to the Rose Foundation for the Environment, an
22 environmental non-profit organization, for projects that will benefit the San Francisco Bay watershed.
23 The Rose Foundation for the Environment reports the grant funding made with the tendered funds to
24 the Court, U.S. Department of Justice, and the Parties, setting forth the recipient and purpose of the
25 funds. Payment shall be made to the Rose Foundation for the Environment, 1970 Broadway, Suite
26 600, Oakland, CA 94612, Attn: Tim Little, with concurrent notice to Baykeeper.

27 22. **Reimbursement of Fees and Costs:** B2 Auto shall reimburse Baykeeper in the amount of
28 twenty thousand dollars (\$20,000) to help cover Baykeeper's reasonable investigation, expert, and

1 attorneys' fees and costs, and all other reasonable costs incurred as a result of investigating the
2 activities at the Facility related to this Decree, bringing these matters to B2 Auto's attention, and
3 negotiating a resolution of this action. B2 Auto shall tender said payment, payable to Baykeeper, in
4 two installments: one installment of \$12,000 by June 1, 2015, and a second installment of \$8,000 by
5 August 1, 2015.

6 **23. Compliance Monitoring Funds:** B2 Auto shall provide to Baykeeper a total of six thousand
7 dollars (\$6,000) for costs and fees associated with monitoring B2 Auto's compliance with this Decree
8 through the termination date of this agreement. The total compliance monitoring fund payment, made
9 payable to Baykeeper, shall be made by August 1, 2015.

10 **24. Interest on Late Payments:** B2 Auto shall pay interest on any payments, fee or costs owed to
11 Baykeeper under this Decree that Baykeeper has not received by the date due. The interest shall
12 accrue starting the first day after the payment is due and shall be computed at 1.5% per month (18%
13 per year).

14 **25. Dispute Resolution:** If a dispute under this Decree arises, or a Party believes that a violation of
15 this Decree has occurred, the Party asserting the dispute or violation shall notify in writing the other
16 Party promptly. Any violation under this Decree capable of being cured shall be deemed cured if,
17 within five (5) business days of first receiving notice of the alleged violation, or within such other
18 period approved in writing by the Party making such allegation, which approval shall not be
19 unreasonably withheld, the party allegedly in violation has completed such cure or, if the breach or
20 default can be cured but is not capable of being cured within such five (5) business day period, has
21 commenced and is diligently pursuing to completion such cure. Otherwise, the Parties shall meet and
22 confer within ten (10) business days of issuance of the notice of dispute or violation, to determine
23 whether a violation of this Decree has occurred and/or to develop a mutually agreed upon plan,
24 including implementation dates, to resolve the dispute. If the Parties fail to meet and confer or the
25 meet and confer does not resolve the issue, after at least seven (7) business days have passed after the
26 meet and confer occurred or should have occurred, either Party shall be entitled to all rights and
27 remedies under the law, including bringing a motion before the United States District Court for the
28 Northern District of California for the limited purpose of enforcing the terms of this Decree. The

1 Parties shall be entitled to seek fees and costs incurred in any such action pursuant to the provisions set
2 forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law
3 interpreting such provisions.

4 **IV. JURISDICTION OVER PARTIES AND SUBJECT MATTER OF CONSENT DECREE**

5 26. **Jurisdiction.** For the purposes of this Decree, the Parties stipulate that the United States
6 District Court of California, Northern District of California, has jurisdiction over the Parties and
7 subject matter of this Decree. The Parties stipulate that venue is appropriate in the Northern District of
8 California and that Baykeeper has standing to bring the Complaint. B2 Auto reserves all other rights
9 and defenses in any such proceeding.

10 27. **Jurisdiction to Enforce Consent Decree.** The Court referenced above shall retain jurisdiction
11 over the Parties and subject matter of this Decree for the purpose of adjudicating all disputes among
12 the Parties that may arise under the provisions of this Decree. The Court shall have the power to
13 enforce this Decree with all available legal and equitable remedies.

14 28. **Submission of Consent Decree to DOJ.** Within three (3) business days of receiving all of
15 the Parties' signatures to this Decree, Baykeeper shall submit this Decree to the U.S. Department of
16 Justice ("DOJ") and EPA for agency review consistent with 40 C.F.R. §135.5. The agency review
17 period expires forty-five (45) calendar days after receipt by the DOJ, evidenced by correspondence
18 from DOJ establishing the review period. In the event DOJ comments negatively on the provisions of
19 this Decree, the Parties agree to meet and confer to attempt to resolve the issues raised by DOJ.

20 29. **Dismissal of Complaint.** If there is no objection by DOJ to this Decree, the Parties shall: (a)
21 request the approval and entry of this Decree in the exact form presented to DOJ; and (b) concurrently
22 stipulate to and request dismissal of this action with prejudice. Such dismissal shall not affect the
23 rights and obligations of the Parties under this Decree, nor shall it affect the power of the Court to
24 enforce this Decree.

25 **V. WAIVER AND RELEASES**

26 30. **Baykeeper Waiver and Release of Noticed Parties:** Baykeeper, on its own behalf and on
27 behalf of its officers, directors, employees, parents, subsidiaries, affiliates and each of their successors
28 and assigns, releases B2 Auto, its officers, directors, employees, members, shareholders, owners,

1 parents, subsidiaries, affiliates, successors or assigns, agents, attorneys and other representatives from
2 and waives all claims raised in the 60-Day Notice and/or the Complaint, including all claims for fees
3 (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or
4 claimed or which could have been claimed for matters included in the 60-Day Notice and/or the
5 Complaint (“Baykeeper Released Claims”). During the term of the Decree, Baykeeper agrees that
6 neither Baykeeper, its officers, executive staff, or members of its governing board, nor any
7 organization under the control of Baykeeper, will file or support any lawsuit against B2 Auto seeking
8 relief for alleged violations of the Clean Water Act, the Industrial Stormwater Permit, or the New
9 General Permit. Enforcement of this Decree is Baykeeper’s exclusive remedy for any violation of the
10 terms contained herein.

11 **31. B2 Auto’s Waiver and Release of Baykeeper:** B2 Auto, on its own behalf and on behalf of
12 its officers, directors, employees, members, shareholders, owners, parents, subsidiaries, affiliates, or
13 their successors or assigns release Baykeeper and its officers, directors, employees, members, parents,
14 subsidiaries, and affiliates, and each of their successors and assigns from, and waive all claims which
15 arise from or pertain to, the 60-Day Notice and/or the Complaint, including all claims for fees
16 (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed
17 or which could have been claimed for matters included in the 60-Day Notice and/or the Complaint
18 (“B2 Released Claims”).

19 **32. Scope of Mutual Releases.** It is understood and agreed by the Parties that the claims released
20 in Paragraphs 30-31 include all claims of every nature and kind with respect to the Baykeeper
21 Released Claims and the B2 Released Claims, whether known or unknown, suspected, or unsuspected.
22 All rights with respect to the Baykeeper Released Claims and the B2 Released Claims under section
23 1542 of the California Civil Code are hereby expressly waived. Section 1542 provides as follows:

**A general release does not extend to claims which the creditor does
not know or suspect to exist in his or her favor at the time of executing
the Release, which if known by him or her must have materially
affected his or her settlement with the debtor.**

24
25
26
27 The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those
28 which they now know or believe to be true with respect to the Baykeeper Released Claims and the B2

1 Released Claims, and the Parties agree that this Agreement, including, without limitation, the releases
2 contained herein, shall be and remain effective in all respects notwithstanding such different or
3 additional facts or the discovery thereof.

4 **VI. MISCELLANEOUS PROVISIONS**

5 33. **Effective Date:** The Agreement shall be effective upon mutual execution by all Parties
6 (“Effective Date”), but shall not be enforceable until the Court Approval Date.

7 34. **Term of Consent Decree:** This Decree shall continue in effect between the Effective Date and
8 September 30, 2017, or, if a Party has invoked dispute resolution pursuant to Paragraph 25 before
9 September 30, 2017, the date when the dispute is resolved (the “Term”), at which time the Decree, and
10 all obligations under it, shall automatically terminate.

11 35. **Early Termination:** If B2 Auto should cease industrial operations at the site and file a Notice
12 of Termination (“NOT”) under the Industrial Stormwater Permit or the New General Permit prior to
13 the termination date of this Decree, B2 Auto shall send Baykeeper a copy of the proposed NOT
14 concurrent with its submittal to the Regional Water Board. Within ten (10) days of the Regional
15 Water Board’s approval of the NOT, B2 Auto shall notify Baykeeper in writing of the approval and
16 remit all outstanding payments, including stipulated payments, to Baykeeper. In the event a new
17 successor or assign continues industrial operations at the site and assumes responsibility for
18 implementation of this Decree pursuant to Paragraph 47, B2 Auto shall notify Baykeeper within ten
19 (10) days of the transition.

20 36. **Execution in Counterparts:** The Decree may be executed in one or more counterparts which,
21 taken together, shall be deemed to constitute one and the same document.

22 37. **Signatures:** The Parties’ signatures to this Decree transmitted by facsimile or electronic mail
23 transmission shall be deemed binding.

24 38. **Construction:** The language in all parts of this Decree, unless otherwise stated, shall be
25 construed according to its plain and ordinary meaning. The captions and paragraph headings used in
26 this Decree are for reference only and shall not affect the construction of this Decree.

1 **39. Authority to Sign:** The undersigned are authorized to execute this Decree on behalf of their
2 respective Party and have read, understood and agreed to all of the terms and conditions of this
3 Decree.

4 **40. Integrated Consent Decree:** All agreements, covenants, representations and warranties,
5 express or implied, oral or written, of the Parties concerning the subject matter of this Decree are
6 contained herein. This Decree supersedes any and all prior and contemporaneous agreements,
7 negotiations, correspondence, understandings, and communications of the Parties, whether oral or
8 written, respecting the matters covered by this Decree.

9 **41. Severability:** In the event that any of the provisions of this Decree are held by a court to be
10 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

11 **42. Choice of Law:** This Decree shall be governed by the laws of the United States or, where
12 applicable, the laws of the State of California, without regard to choice-of-law principles.

13 **43. Full Settlement:** This Decree constitutes a full and final settlement of this matter.

14 **44. No Admission:** The Parties enter into this Decree for the purpose of avoiding prolonged
15 and costly litigation. Nothing in this Decree shall be construed as, and B2 Auto expressly does not
16 intend to imply, any admission as to any fact, finding, conclusion, issue of law, or violation of law, nor
17 shall compliance with this Agreement constitute or be construed as an admission by B2 Auto of any
18 fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish
19 or otherwise affect the obligation, responsibilities, and duties of the Parties under this Agreement.

20 **45. Negotiated Agreement:** The Parties have negotiated this Decree, and agree that it shall not be
21 construed against the party preparing it, but shall be construed as if the Parties jointly prepared this
22 Decree, and any uncertainty and ambiguity shall not be interpreted against any one party.

23 **46. Modification of the Agreement:** This Decree, and any provisions herein, may not be
24 changed, waived, or discharged unless by a written instrument signed by each of the Parties.

25 **47. Assignment:** Subject only to the express restrictions contained in this Decree, all of the rights,
26 duties and obligations contained in this Decree shall inure to the benefit of and be binding upon the
27 Parties, and their successors and assigns.

1 **48. Mailing of Documents to Baykeeper/Notices/Correspondence:** Any notices or documents
2 required or provided for by this Decree or related thereto that are to be provided to Baykeeper pursuant
3 to this Decree shall be, to the extent feasible, sent via electronic mail transmission to the e-mail
4 address listed below or, if electronic mail transmission is not feasible, via certified U.S. Mail with
5 return receipt, or by hand delivery to the following address:

6 San Francisco Baykeeper
7 Attention: Nicole Sasaki
8 1736 Franklin St., Suite 800
9 Oakland, CA 94612
10 E-mail: nicole@baykeeper.org

11 Unless requested otherwise by B2 Auto, any notices or documents required or provided for by
12 this Decree or related thereto that are to be provided to B2 Auto pursuant to this Decree shall, to the
13 extent feasible, be provided by electronic mail transmission to the e-mail addresses listed below, or, if
14 electronic mail transmission is not feasible, by certified U.S. Mail with return receipt, or by hand
15 delivery to the addresses below:

16 B2 Auto Dismantler
17 Attention: Tan Duy
18 245 Leo Ave.
19 San Jose, CA 95112
20 Email: b2auto408@gmail.com

21 With copies sent to:

22 Donald E. Sobelman, Esq.
23 Barg Coffin Lewis & Trapp, LLP
24 350 California Street, 22nd Floor
25 San Francisco, CA 94104
26 Email: des@bcltlaw.com

27 Jeanne Eber
28 Bloom Investment Company, LP
 7 Mann Drive
 Kentfield, CA 94904
 Email: jeber@biclp.com

 Notifications or communications shall be deemed submitted on the date that they are emailed, or
 postmarked and sent by first-class mail, or deposited with an overnight mail/delivery service. Any
 changes of address or addressees shall be communicated in the manner described above for giving
 notices.

49. No Third-Party Beneficiaries: This Decree is made for the sole benefit of the Parties, and no

1 other person or entity shall have any rights or remedies under or by reason of this Decree, unless
2 otherwise expressly provided for therein.

3 50. **Force Majeure:** No Party shall be considered to be in default in the performance of any of its
4 obligations under this Decree when performance becomes impossible due to circumstances beyond the
5 Party's control, including without limitation any act of God, act of war or terrorism, fire, earthquake,
6 and flood. "Circumstances beyond the Party's control" shall not include normal inclement weather,
7 economic hardship, or inability to pay. Any Party seeking to rely upon this Paragraph shall have the
8 burden of establishing that it could not reasonably have been expected to avoid, and which by exercise
9 of due diligence has been unable to overcome, the impossibility of performance.

10 51. **Impossibility of Performance:** Where implementation of the actions set forth in this Decree
11 becomes impossible within the deadlines set forth in those paragraphs, despite the timely good faith
12 efforts of the Parties, the party who is unable to comply shall notify the other in writing within seven
13 (7) business days of the date that the failure becomes apparent, but in any case before the deadline for
14 the obligation, and shall describe the reason for the nonperformance. The Parties agree to meet and
15 confer in good faith concerning the non-performance pursuant to Paragraph 25, above. If the Parties
16 concur that the non-performance was or is impossible, despite the timely good faith efforts of one of
17 the Parties, new performance deadlines shall be established. In the event that the Parties cannot timely
18 agree upon the terms of such a stipulation, either Party shall have the right to seek enforcement of this
19 agreement as provided in Paragraph 25, above.

20 52. If for any reason the Court should decline to approve this Decree in the form presented, the
21 Parties shall use their best efforts to work together to modify the Decree within thirty (30) days so that
22 it is acceptable to the Court. If the Parties are unable to modify this Decree in a mutually acceptable
23 manner, this Decree shall become null and void.

24 The settling Parties hereto enter into this Consent Decree, Order and Final Judgment and
25 respectfully submit it to the Court for its approval and entry as a final judgment.

26 [SIGNATURES ON NEXT PAGE]
27
28

1 SAN FRANCISCO BAYKEEPER

2 Date: 1/14/2015

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4 Erica A. Maharg
5 Staff Attorney, San Francisco Baykeeper

6
7 B2 Auto Dismantler/Muoi Phan

8 Date:

9
10 _____
11 By:
12 Muoi Phan

13 APPROVED AND SO ORDERED, this ___ day of _____.

14 UNITED STATES DISTRICT JUDGE

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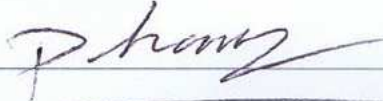
SAN FRANCISCO BAYKEEPER

Date:

Erica A. Maharg
Staff Attorney, San Francisco Baykeeper

B2 Auto Dismantler/Muoi Phan

Date: 1/16/15

By: 
Muoi Phan

APPROVED AND SO ORDERED, this 13 day of March 2015.

UNITED STATES MAGISTRATE JUDGE



EXHIBIT 1

EXHIBIT 1

Target Levels for Stormwater Sampling

Constituent	Target Levels	Source
pH	6.5– 8.5 SU	<i>San Francisco Bay Basin Water Quality Control Plan, Water Quality Objective</i>
Total Suspended Solids	100 mg/L	<i>Multi-Sector General Permit 2008 Sector-Specific Benchmark</i>
Oil and Grease	15 mg/L	<i>Multi-Sector General Permit 2000 Benchmark</i>
Total Aluminum	0.75 mg/L	<i>Multi-Sector General Permit 2008 Sector-Specific Benchmark</i>
Total Copper	0.013 mg/L	<i>San Francisco Bay Basin Water Quality Control Plan, Water Quality Objective</i>
Total Iron	1.0 mg/L	<i>Multi-Sector General Permit 2008 Sector-Specific Benchmark</i>
Total Zinc	0.12 mg/L	<i>San Francisco Bay Basin Water Quality Control Plan, Water Quality Objective</i>
Total Mercury	.0024 mg/L	<i>San Francisco Bay Basin Water Quality Control Plan, Water Quality Objective</i>