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U.S. EPA - Region 09

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8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

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11 In the matter of:) Docket No. TSCA-09-2019-0050
12)
13 Create RE, Inc.,) CONSENT AGREEMENT
AND FINAL ORDER
14 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

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17 I. CONSENT AGREEMENT

18 The United States Environmental Protection Agency, Region IX (“EPA”), and Create RE,
19 Inc. (the “Respondent”) agree to settle this matter and consent to the entry of this Consent
20 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this
21 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

22 A. AUTHORITY AND PARTIES

23 1. This is a civil administrative penalty action brought against Respondent pursuant to
24 Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), for violation
25 of Section 409 of TSCA, 15 U.S.C. § 2615(a), by failing to comply with Sections 402 and 406
26 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing federal regulations promulgated at
27 40 C.F.R. Part 745, Subpart E.
28

1 holes in painted surfaces to install blown-in insulation or to gain access to attics planning
2 thresholds to install weatherstripping), and interim controls that disturb painted surfaces

3 The term “renovation” does not include minor repair and maintenance activities. 40 C.F.R. §
4 745.83.

5 9. “Painted surface” means a component surface covered in whole or in part with paint or
6 other surface coatings. 40 C.F.R. § 745.83.

7 10. “Component or building component” means specific design or structural elements or
8 fixtures of a building or residential dwelling that are distinguished from each other by form,
9 function, and location. These include, but are not limited to interior components such as . . .
10 windows and trim (including sashes, window heads, jambs, sills or stools and troughs) . . . and
11 exterior components such as . . . windowsills or stools and troughs, casings, sashes and wells. 40
12 C.F.R. § 745.83.

13 11. “Renovator” means any individual who either performs or directs workers who
14 perform renovations. A certified renovator is a renovator who has successfully completed a
15 renovator course accredited by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. §
16 745.83.

17 12. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil Monetary Penalty
18 Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties
19 Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorize civil penalties not to
20 exceed \$38,892 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689, that
21 occurred on or after November 2, 2015 where penalties were assessed on or after January 15,
22 2018 but before January 15, 2019.

23 C. ALLEGED VIOLATIONS

24 13. Respondent is a “person,” as that term is defined at 40 C.F.R. § 745.83.

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

27 15. In or around the Summer and Autumn of 2016, Respondent performed “renovations,”
28 as that term is defined at 40 C.F.R. § 745.83, for compensation at the residential properties

1 located at: 6030 Jaymills Avenue in Long Beach, California; 215 East 85th Street in Los Angeles,
2 California; 450 East Platt Street in Long Beach, California; and 1449 West 88th Place in Los
3 Angeles, California (collectively, the "Properties").

4 16. At all times relevant to this CAFO, the Properties were "target housing," as that term
5 is defined at 40 C.F.R. § 745.83.

6 17. Firms that perform renovations for compensation must apply to EPA for certification
7 to perform renovations. 40 C.F.R. § 745.89(a).

8 18. On or after April 22, 2010, no firm may perform a renovation without certification
9 from EPA under 40 C.F.R. § 745.89(a) in target housing unless the renovation is performed in
10 target housing that has been determined to be lead-free pursuant to 40 C.F.R. § 745.82(a). 40
11 C.F.R. § 745.81(a)(2)(ii).

12 19. At all times relevant to this CAFO, Respondent did not have a certification from
13 EPA to perform renovations for compensation at the Properties.

14 20. At all times relevant to this CAFO, the Properties had not been determined to be
15 lead-free pursuant to 40 C.F.R. § 745.82(a) before the renovations for compensation occurred.

16 21. Respondent's performance of renovations for compensation at the Properties without
17 certification from EPA under 40 C.F.R. § 745.89(a) constitutes one violation of 40 C.F.R. §
18 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

19 22. Firms performing renovations must comply with the work practice standards of §
20 745.85, including the cleaning of the work area until no dust, debris, or residue remains after the
21 renovation has been completed. 40 C.F.R. § 745.85(a)(5)(ii).

22 23. Respondent did not clean the work area until no dust, debris, or residue remained
23 after the renovations had been completed at the Properties.

24 24. Respondent's failures to clean the work area until no dust, debris, or residue
25 remained after the renovations had been completed at the Properties constitute four violations of
26 40 C.F.R. § 745.85(a)(5)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

27 25. Firms performing renovations must retain documentation of compliance with the
28 requirements of § 745.85, including documentation that: a certified renovator was assigned to

1 the project; a certified renovator provided on-the-job training for workers used on the project; a
2 certified renovator performed or directed workers who performed all of the work practice tasks
3 described in § 745.85(a); a certified renovator performed the post-renovation cleaning
4 verification described in § 745.85(b); includes a copy of the certified renovator's training
5 certificate; and includes a detailed certification by the certified renovator. 40 C.F.R. §
6 745.86(b)(6).

7 26. Respondent did not retain documentation for the renovations performed at the
8 Properties that: a certified renovator was assigned to the project; a certified renovator provided
9 on-the-job training for workers used on the project; a certified renovator performed or directed
10 workers who performed all of the work practice tasks described in § 745.85(a); a certified
11 renovator performed the post-renovation cleaning verification described in § 745.85(b); includes
12 a copy of the certified renovator's training certificate; and includes a detailed certification by the
13 certified renovator.

14 27. Respondent's failures to retain documentation for the renovations performed at the
15 Properties that: a certified renovator was assigned to the project; a certified renovator provided
16 on-the-job training for workers used on the project; a certified renovator performed or directed
17 workers who performed all of the work practice tasks described in § 745.85(a); a certified
18 renovator performed the post-renovation cleaning verification described in § 745.85(b); includes
19 a copy of the certified renovator's training certificate; and includes a detailed certification by the
20 certified renovator constitute 24 violations of 40 C.F.R. § 745.86(b)(6) and Section 409 of
21 TSCA, 15 U.S.C. § 2689.

22 D. RESPONDENT'S ADMISSIONS

23 28. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
24 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
25 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
26 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
27 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
28 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the

1 proposed Final Order contained in this CAFO.

2 E. CIVIL ADMINISTRATIVE PENALTY

3 29. In settlement of the violations specifically alleged in Section I.C of this CAFO,
4 Respondent shall pay a civil administrative penalty of FIVE THOUSAND, ONE HUNDRED,
5 AND THIRTY-FIVE DOLLARS (\$5,135). Respondent shall pay this civil penalty within thirty
6 (30) days of the effective date of this CAFO. The civil penalty shall be paid by remitting a
7 certified or cashier's check, including the name and docket number of this case, for the amount,
8 payable to "Treasurer, United States of America," (or be paid by one of the other methods listed
9 below) and sent as follows:

10 Regular Mail:

11 U.S. Environmental Protection Agency
12 Fines and Penalties
13 Cincinnati Finance Center
14 PO Box 979077
St. Louis, MO 63197-9000

15 Wire Transfers:

16 Wire transfers must be sent directly to the Federal Reserve Bank in New
17 York City with the following information:
18 Federal Reserve Bank of New York
19 ABA = 021030004
20 Account = 68010727
21 SWIFT address = FRNYUS33
22 33 Liberty Street
23 New York, NY 10045
24 Beneficiary = U.S. Environmental Protection Agency

25 Certified or Overnight Mail:

26 U.S. Bank
27 1005 Convention Plaza
28 Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through
the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account = 31006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

1 Physical location of U.S. Treasury facility:

2 5700 Rivertech Court
3 Riverdale, MD 20737

4 Remittance Express (REX) = (866) 234-5681

5 On Line Payment:

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

7 www.pay.gov
8 Enter "SFO 1.1" in the search field
9 Open form and complete required fields

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

12 A copy of each check, or notification that the payment has been made by one of the other
13 methods listed above, including proof of the date payment was made, shall be sent with a
14 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
15 following addresses:

16 Regional Hearing Clerk
17 Office of Regional Counsel (ORC-1)
18 U.S. Environmental Protection Agency, Region IX
19 75 Hawthorne Street
20 San Francisco, CA 94105

21 Max Weintraub
22 Toxics Section
23 Enforcement and Compliance Assurance Division (ENF-4-1)
24 U.S. Environmental Protection Agency, Region IX
25 75 Hawthorne Street
26 San Francisco, CA 94105

27 30. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
28 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
use such payment as a tax deduction.

31. If Respondent fails to pay the assessed civil administrative penalty of FIVE
THOUSAND, ONE HUNDRED, AND THIRTY-FIVE DOLLARS (\$5,135), as identified in
Paragraph 29, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated
penalty to EPA of \$500 per day in addition to the assessed penalty. Stipulated penalties shall

1 accrue until such time as the assessed penalty and all accrued stipulated penalties are paid and
2 shall become due and payable upon EPA's written request. Failure to pay the civil administrative
3 penalty specified in Paragraph 29 by the deadline specified in that Paragraph may also lead to any
4 or all of the following actions:

5 (1) EPA may refer the debt to a credit reporting agency, a collection
6 agency, or to the Department of Justice for filing of a collection action in the appropriate United
7 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
8 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
9 collection proceeding.

10 (2) The U.S. Government may collect the debt by administrative offset
11 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
12 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
13 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
14 C.F.R. §§ 13(C) and 13(H).

15 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
16 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
17 business with EPA or engaging in programs EPA sponsors or funds.

18 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
19 Government may assess interest, administrative handling charges, and nonpayment penalties
20 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
21 civil administrative penalty specified in Paragraph 29 by the deadline specified in that Paragraph.

22 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
23 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
24 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
25 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
26 (30) days of the effective date of this CAFO.

27 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
28 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,

1 based on either actual or average cost incurred (including both direct and indirect costs), for
2 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

3 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
4 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
5 may be assessed on all debts more than ninety (90) days delinquent.

6 F. CERTIFICATION OF COMPLIANCE

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

9 G. RETENTION OF RIGHTS

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

18 34. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
19 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
20 and permits.

21 H. ATTORNEYS' FEES AND COSTS

22 35. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
23 this proceeding.

24 I. EFFECTIVE DATE

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

J. BINDING EFFECT

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

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

FOR RESPONDENT CREATE RE, INC.:

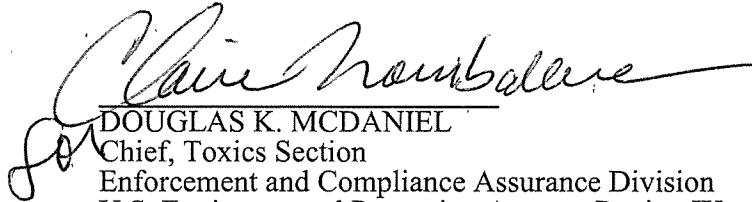
6/4/2014
DATE



SEAN A. HAGHI
President
Create RE, Inc.

FOR COMPLAINANT EPA:

6/24/2019
DATE

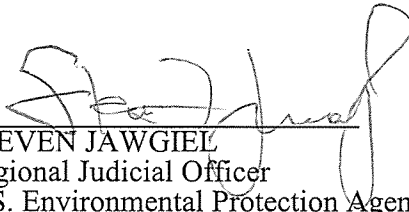

DOUGLAS K. MCDANIEL
Chief, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

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1 II. FINAL ORDER

2 EPA and Create RE, Inc. having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2019-0050) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of FIVE
5 THOUSAND, ONE HUNDRED, AND THIRTY-FIVE DOLLARS (\$5,135), and comply with
6 the terms and conditions set forth in the Consent Agreement.

7
8
9 07/01/19
10 DATE

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

CERTIFICATE OF SERVICE

I hereby certify that the original of the Consent Agreement and Final Order in the matter of Create RE Inc. (TSCA-09-2019-0050), has been filed by the Regional Hearing Clerk, and a true and correct copy was served as indicated below:

Certified Mail

Respondent:

Sean Haggi
Create RE Inc.
909 N. Pacific Coast Highway (Suite #385)
El Segundo, CA 90245

Complainant:

Hand Delivery

Edgar Coral
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Dated: July 10, 2019

Steven Armsey
Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX