

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

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MAY 11 2016
OFFICE OF THE REGIONAL ADMINISTRATOR
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

FC PRO, LLC
19914 GH Circle
Waller, Texas 77484

RESPONDENT
(No EPA ID NUMBER)

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§ Consent Agreement and Final Order
§ USEPA Docket No. RCRA-06-2015-0912
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CONSENT AGREEMENT AND FINAL ORDER
I.
PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”) and Respondent, FC PRO, LLC (“FC PRO” or “Respondent”), and concerns the facility located at 19914 GH Circle, Waller, Texas 77484 (the “Facility”).
2. Notice of this action has been given to the State of Texas, under Section 3008(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a)(2).
3. For the purpose of these proceedings, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

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4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed final order contained in this CAFO, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.
5. The CAFO resolves only those violations which are alleged herein.
6. Respondent consents to the issuance of the CAFO hereinafter recited, consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO, and consents to the specific stated compliance order.

II.
JURISDICTION

7. This CAFO is issued by the EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA") and is simultaneously commenced and concluded through the issuance of this CAFO under 40 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2) and (3).
8. Respondent agrees to undertake and complete all actions required by the terms and conditions of this CAFO. In any action by the EPA or the United States to enforce the terms of this CAFO, Respondent agrees not to contest the authority or jurisdiction of the EPA to issue or enforce this CAFO, and agrees not to contest the validity of this CAFO or its terms or conditions.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Respondent is a Delaware corporation, authorized to do business in Texas on February 2, 2012, and is located at 19914 GH Circle, Waller, Texas 77484.

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10. On or about January 4, 2012, FC PRO began its operations at 19914 GH Circle, Waller, Texas 77484.
11. Respondent is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); and 30 TEX.ADMIN.CODE § 3.2(25), [40 C.F.R. § 260.10].
12. Respondent's Registered Agent for service in the State of Texas is Casey W. Doherty Sr., and is located at 1717 St James Place, Suite 520, Houston, Texas 77056.
13. FC PRO owns and operates a Facility that is a supplier of specialty products for applications within the oil and gas industry, including solvents and surfactants.
14. During the period of January 2014 through December 2014, EPA conducted a RCRA investigation and record review ("Investigation") of FC PRO's performance as a generator of hazardous waste.
15. In May 2014, EPA conducted site visits at several Treatment, Storage, and Disposal Facilities ("TSDs") and pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927 obtained additional information on FC PRO's hazardous wastes that it offered for transport and treatment ("Responses").
16. During the Investigation and review of the Responses, EPA discovered that FC PRO, at a minimum, generated, treated, stored, and offered for transport and treatment the following hazardous waste, during 2012 through 2013:
 - i. 2012- Shipment(s) totaling 19,090 kg of hazardous wastes, having the hazardous waste characteristic of ignitability (D001) and listed hazardous waste, with the waste code F003; and

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- ii. 2013- Shipment(s) totaling 39,261 kg of hazardous wastes, having the hazardous waste characteristic of ignitability (D001) or listed hazardous waste, with the waste codes F003, or both D001 and F003.

17. The waste streams identified in Paragraph 16 are “hazardous waste” as defined in 30 TEX.ADMIN.CODE § 335.1 (69), [40 C.F.R. §§ 261.21 and 261.31].
18. From the Investigation and review of the Responses, EPA determined that during the period of 2012 through 2013, FC PRO generated, at a minimum, the hazardous waste streams identified in Paragraph 16 in quantities that exceeded the threshold amount in some instances of 100 kg and in other instances 1000 kg of hazardous waste per month, which would have qualified FC PRO, at minimum, for the small quantity generator status under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. Part 262].
19. During the times relevant to the CAFO, FC PRO operated as a “generator” of “hazardous waste” at the Facility, as those terms are defined in Sections 1004(5) & (6) of RCRA, 42 U.S.C. §§ 6903(5) & (6), and 30 TEX ADMIN.CODE §§ 335.1(65) & (69), [40 C.F.R. § 260.10].
20. During the times relevant to the CAFO, the Facility operated as a “solid waste management facility” within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29); a “facility” within the meaning of 30 TEX ADMIN.CODE § 335.1(59), [40 C.F.R. § 260.10]; and included at least one “hazardous waste management unit” within the meaning of 30 TEX ADMIN.CODE §§ 335.1(72). [40 C.F.R. § 260.10].

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21. As a generator of hazardous waste, FC PRO is subject to Sections 3002 and 3010 of RCRA, 42 U.S.C. §§ 6922 and 6930, and the regulations set forth at 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C. [40 C.F.R Part 262].

Claim i. Notification Requirements

22. The allegations in Paragraphs 1-21 are realleged and incorporated herein by reference.
23. Pursuant to 30 TEX.ADMIN.CODE §§ 335.78(a) and (b), [40 C.F.R. §§ 261.5(a) and (b)], a generator is a conditionally exempt small quantity generator (“CESQG”) in a calendar month if he generates no more than 100 kg of hazardous waste and complies with 30 TEX.ADMIN.CODE §§ 335.78(f), (g), and (j), [40 C.F.R. §§ 261.5 (f), (g), and (j)].
24. The exemptions set forth at 30 TEX.ADMIN.CODE § 335.78(c), [40 C.F.R. § 261.5(c)], were not applicable to FC PRO.
25. During the times relevant to the CAFO, EPA determined that FC PRO did not operate as a CESQG.
26. During the Investigation and review of the Responses, EPA determined that FC PRO has been a small quantity generator in several instances and has also operated as large quantity generator in other instances.
27. Within the meaning of 30 TEX.ADMIN.CODE § 335.1(65), [40 C.F.R. § 260.10], FC PRO, during the times relevant to the CAFO, operated as a “generator”.
28. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a), any person generating a characteristic or listed hazardous waste shall file with the Administrator or authorized State a

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notification stating the location and general description of such activity and the identified characteristic or listed hazardous wastes handled by such person.

29. Further, no identified characteristic or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required by Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
30. FC PRO did not file with the Administrator or the authorized State an initial or subsequent notification of its hazardous waste activities for the period of 2012 through 2013 in violation of Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).

Claim ii. Managing Hazardous Waste without a Generator Identification Number

31. The allegations in Paragraphs 1-30 are realleged and incorporated herein by reference.
32. Pursuant to 30 TEX.ADMIN.CODE § 335.63(a), [40 C.F.R. § 262.12(a)], a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.
33. During the Investigation and review of the Responses, EPA determined that FC PRO did not apply to the Administrator and receive an EPA identification number.
34. FC PRO does not have an EPA identification number.
35. At all relevant times to the CAFO, FC PRO treated, stored, disposed of, and/or offered for transportation hazardous waste without having received an EPA identification number from the Administrator in violation of 30 TEX.ADMIN.CODE § 335.63(a), [40 C.F.R. § 262.12(a)].

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Claim iii. Failure to Operate within Its Stated Generator Status

36. The allegations in Paragraphs 1-35 are realleged and incorporated herein by reference.
37. During the Investigation, EPA determined that FC PRO declared its generator status as a conditionally exempt small quantity generator (“CESQG”).
38. Pursuant to 30 TEX.ADMIN.CODE § 335.78(b), [40 C.F.R. § 261.5(b)], as long as a CESQG complies with the applicable requirement under 30 TEX.ADMIN.CODE §§ 335.78(e), (f), (g) and (j) and 40 C.F.R. §§ 261.5 (e), (f), (g) and (j), the generator’s hazardous waste is not subject to regulation under 30 TEX.ADMIN.CODE, Chapter 335, Subchapters C-II and O; 40 C.F.R. Parts 262 through 268; 40 C.F.R. Parts 270 and 124; and the requirements of Section 3010 of RCRA, 42 U.S.C. § 6930.
39. During portions of 2012 through 2013, FC PRO exceeded its declared CESQG status and operated in some instances as a small quantity generator and in other instances as a large quantity generator in violation of one or more of the requirements for small and large quantity generators under 30 TEX.ADMIN.CODE, Chapter 335, Subchapter C, [40 C.F.R. § 262.34].

Claim iv. Failure to File Biennial Reports

40. The allegations in Paragraphs 1-39 are realleged and incorporated herein by reference.
41. Pursuant to 30 TEX.ADMIN.CODE § 335.71, [40 C.F.R. § 262.41], a generator who ships any hazardous waste off-site for treatment, storage and/or disposal, must prepare and submit a Biennial Report to EPA’s Regional Administrator, and to the TCEQ, by March 1 of each even-numbered year in addition to the annual reporting, which is required under 30 TEX.ADMIN.CODE § 335.9.

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42. At all times relevant to this CAFO, the EPA and/or the TCEQ did not receive the requisite number of Biennial Reports that FC PRO was required to file in violation of 30 TEX.ADMIN.CODE §§ 335.9 and 335.71, [40 C.F.R. § 262.41].

Claim v. Failure to Comply with the Manifest Requirements

43. The allegations in Paragraphs 1-42 are realleged and incorporated herein by reference.

44. Pursuant to 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)(1)], a small or large quantity generator shall not offer its hazardous waste for shipment unless it prepares a standard manifest form (EPA Form 8700-22) according to the instructions found in the Appendix to 40 C.F.R. Part 262 and includes a Texas waste code for each hazardous waste itemized on the manifest.

45. During the period of 2012 to 2013, Respondent generated and offered for shipment hazardous waste, manifested on a minimum of 6 manifests without an EPA identification number.

46. Therefore, FC PRO failed to accurately and adequately prepare its hazardous waste manifests for its shipments of hazardous waste in violation of 30 TEX.ADMIN.CODE §§ 335.10(a)(1) and 335.10(c), [40 C.F.R. § 262.20(a)(1)].

Claim vi. Failure to Keep Required Records

47. The allegations in Paragraphs 1-46 are realleged and incorporated herein by reference.

48. Pursuant to 30 TEX.ADMIN.CODE § 335.70(a), [40 C.F.R. § 262.40(c)], a generator must keep records of any test results, waste analyses, or other determinations made in accordance with 30 TEX.ADMIN.CODE § 335.62, [40 C.F.R. § 262.11] for at least three years from the date the waste was last sent to an on-site or off-site facility for treatment, storage, or disposal.

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49. At all times relevant to this CAFO, Respondent did not create and keep the requisite hazardous waste determination records made in accordance with its hazardous waste determination in violation of 30 TEX.ADMIN.CODE § 335.70(a), [40 C.F.R. § 262.40(c)].

Claims vii. Storage of Hazardous Waste without a Permit

50. The allegations in Paragraphs 1-49 are realleged and incorporated herein by reference.

51. Pursuant to 30 TEX.ADMIN.CODE § 335.69, [40 C.F.R. § 262.34(a)], a generator of hazardous waste who accumulates its hazardous waste on site is exempted from the permit or interim status requirements of RCRA, provided the generator complies with the applicable requirements set forth at 30 TEX.ADMIN.CODE § 335.69, [40 C.F.R. § 262.34].

52. Pursuant to 30 TEX.ADMIN.CODE § 335.69(b), [40 C.F.R. § 262.34(b)], a generator of 1,000 kilogram or greater of hazardous waste in a calendar month, who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264, 265, 267, and the Permit requirements of 270 unless the generator has been granted an extension to the 90-day period.

53. During the period of January 4, 2012 to September 28, 2012, Respondent accumulated 19,090 kg of hazardous waste on site, having the characteristics of ignitability (D001) and listed hazardous waste, with the waste code of F003. During the period of September 28, 2012 to January 23, 2013, Respondent accumulated 18,955 kg of hazardous waste on site, having the characteristics of ignitability (D001) and listed hazardous waste, with the waste code of F003. During the period of January 23, 2013 to August 1, 2013, Respondent

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accumulated 18,182 kg of hazardous waste on site, having the characteristics of ignitability (D001) and listed hazardous waste, with the waste code of F003.

54. Respondent was not granted an extension to the 90-day period, for the hazardous waste described in Paragraph 53, pursuant to 30 TEX.ADMIN.CODE § 335.69(b), [40 C.F.R. § 262.34(b)].
55. For the time periods described in Paragraph 53, Respondent stored hazardous waste at its Facility in violation of 30 TEX.ADMIN.CODE Subchapters C and F, [40 C.F.R. Parts 264, 265, 267, and 270].

IV.
COMPLIANCE ORDER

56. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered, upon the effective date of this Order, not to treat, store, dispose of, transport, or offer for transportation, hazardous waste without first receiving an EPA identification number from the State of Texas.
57. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to take the following actions, and within sixty (60) calendar days of the effective date of this Order, Respondent shall provide in writing the following:
- A. Respondent shall certify that it has assessed all its solid waste streams to determine the accurate waste codes and has developed and implemented standard operating procedures (“SOP”) to ensure that FC PRO is operating in compliance with RCRA and the regulations promulgated thereunder, including, but not limited to, procedures for:

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(a) making hazardous waste determinations; (b) managing hazardous wastes;
(c) reporting, transporting, and disposing of hazardous waste; (d) preparing its manifests;
and (e) meeting the requirements of the land disposal requirements;

B. Respondent shall certify that it has accurately and adequately complied with its
RCRA Section 3010 Notification and the requirements of Paragraph 56 above and
within the prescribed time period; and

C. Respondent shall provide, with its certification, a copy of Respondent's SOPs as
described in subparagraph A above.

58. In all instances in which this CAFO requires written submission to EPA, the submittal made
by Respondent shall be signed by an owner or officer of FC PRO and shall include the
following certification:

"I certify under the penalty of law that this document and all its attachments were prepared by
me or under my direct supervision in accordance with a system designed to assure that
qualified personnel properly gathered and evaluated the information submitted. Based on my
inquiry of the person or persons who manage the system, or those persons directly
responsible for gathering the information, the information submitted is, to the best of my
knowledge and belief, true, accurate, and complete. I am aware that there are significant
penalties for submitting false information, including the possibility of fine and imprisonment
for knowing violations."

Copies of all documents required by this CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Compliance Assurance and Enforcement Division
Hazardous Waste Enforcement Branch
Compliance Enforcement Section (6EN-HC)
1445 Ross Avenue
Dallas, TX 75202-2733
Attn: Dale Thrush

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V.

TERMS OF SETTLEMENT

i. Penalty Provisions

59. Pursuant to the authority granted in Section 3008 of RCRA, 42 U.S.C. § 6928, and upon consideration of the entire record herein, including the above referenced Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, upon the seriousness of the alleged violations, and Respondent's good faith efforts to comply with the applicable regulations, it is ordered that Respondent be assessed a civil penalty of Four Hundred and Ten Thousand Eight Hundred and Sixty-Eight Dollars (\$410, 868).
60. The penalty shall be paid within thirty (30) calendar days of the effective date of this CAFO and made payable to the Treasurer United States.
61. The following are Respondent's options for transmitting the penalties:
- Regular Mail, U.S. Postal Mail (including certified mail) or U.S. Postal Service Express
- Mail, the check should be remitted to:
- U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

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Overnight Mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SI-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

The case name and docket number (In the Matter of FC PRO, LLC Docket No. RCRA-06-2015-0912) shall be clearly documented on or within your chosen method of payment to ensure proper credit.

62. The Respondent shall send a simultaneous notice of such payment to the following:

Lorena S. Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Mark Potts, Associate Director
Hazardous Waste Enforcement Branch (6FN-H)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
Attention: Dale Thrush

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Your adherence to this request will ensure proper credit is given when penalties are received by EPA.

63. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid within thirty (30) calendar days of the civil penalty's due date and will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(b). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

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ii. Cost

64. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 04-121), and any regulations promulgated pursuant to those Acts.

iii. Termination and Satisfaction

65. When Respondent believes that it has complied with all the requirements of this CAFO, including compliance with the Compliance Order and payment of the civil penalty, Respondent shall so certify in writing and in accordance with the certification language set forth in Section IV (Compliance Order), Paragraph 58. Unless the EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, then this CAFO is terminated on the basis of Respondent's certification.

iv Effective Date of Settlement

66. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT
AGREEMENT AND FINAL ORDER:**


FOR THE RESPONDENT:

Date: 4-14-15


FC PRO, LLC
C.E.O.

FOR THE COMPLAINANT:

Date: 4-15-15

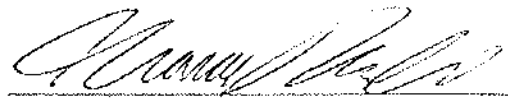

John Blevins
Director
Compliance Assurance and
Enforcement Division

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FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR Part 22, the foregoing CAFO is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the CAFO. Pursuant to 40 CFR § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 4/20/15



Thomas Rucki
Regional Judicial Officer

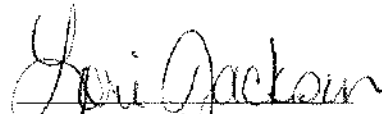
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CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of April, 2015, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 704015000024533894

FC PRO, LLC
C/o Megan Williams
Doherty & Doherty LLP
1717 St. James Place Suite 520
Houston, TX 77056


Ms. Lori Jackson
Paralegal