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7
8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. TSCA-09-2019- 0060
11)
12 Century 21 Homefinders of Hawaii,)
13) CONSENT AGREEMENT
Respondent.) AND FINAL ORDER
14) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

15 I. CONSENT AGREEMENT

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

20 A. AUTHORITY AND PARTIES

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

1 10. "Agent" means any party who enters into a contract with a seller or lessor, including
2 any party who enters into a contract with a representative of the seller or lessor, for the purpose
3 of selling or leasing target housing. 40 C.F.R. § 745.103.

4 11. Each contract to sell target housing shall include, as an attachment, a Lead Warning
5 Statement containing language provided in 40 C.F.R. § 745.113(a)(1). 40 C.F.R. §
6 745.113(a)(1).

7 12. Each contract to sell target housing shall include, as an attachment, a statement by the
8 purchaser affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(a)(2) and (3) and
9 the lead hazard information pamphlet required under 15 U.S.C. § 2696. 40 C.F.R. §
10 745.113(a)(4).

11 13. Each contract to sell target housing shall include, as an attachment, a statement by the
12 purchaser that he/she has either received the opportunity to conduct the risk assessment or
13 inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity. 40 C.F.R. §
14 745.113(a)(5).

15 14. Each contract to lease target housing shall include, as an attachment or within the
16 contract, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§
17 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. §
18 2696. 40 C.F.R. § 745.113(b)(4).

19 15. When one or more agents are involved in the transaction to lease target housing on
20 behalf of the lessor, each contract to lease target housing shall include, as an attachment or within
21 the contract, a statement that the agent has informed the lessor of the lessor's obligations under
22 Section 1018 and the agent is aware of his/her duties to ensure compliance with the requirements
23 of 40 C.F.R. Part 745, Subpart F. 40 C.F.R. § 745.113(b)(5).

24 16. The seller, and any agent, shall retain a copy of the completed attachment required
25 under paragraph (a) of this section for no less than 3 years from the completion date of the sale.
26 40 C.F.R. § 745.113(c)(1).

27 17. As provided at 40 C.F.R. § 745.118(e), failure to comply with 40 C.F.R. § 745.113 is
28 a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and the penalty for each such violation

1 shall not be more than \$16,000 for violations occurring on or before November 2, 2015 and
2 \$17,834 for violations occurring after November 2, 2015 pursuant to the Civil Monetary Penalty
3 Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties
4 Inflation Adjustment Acts of 1990 and 2015, Pub. L. 101-410.

5 C. ALLEGED VIOLATIONS

6 18. EPA has jurisdiction over this matter pursuant to Section 1018.

7 19. At all times relevant to this matter, Respondent was a “seller” of and “agent” for the
8 three residential properties located at 44 Punahale Street in Hilo, Hawaii (the “Punahale
9 Property”), 361 Kaumana Drive in Hilo, Hawaii (the “Kaumana Property”), and 19-4121
10 Haunani Road in Volcano, Hawaii (the “Haunani” Property), as those terms are defined at 40
11 C.F.R. § 745.103.

12 20. At all times relevant to this matter, Respondent was a “lessor” of and “agent” for the
13 two residential properties located at 16 Puuhina Street in Hilo, Hawaii (the “Puuhina” Property)
14 and 630 Wainuku Street in Hilo, Hawaii (the “Wainuku” Property) as those terms are defined at
15 40 C.F.R. § 745.103.

16 21. At all times relevant to this matter, the five residential properties referenced in
17 Paragraphs 19 and 20 were “target housing,” as that term is defined at 40 C.F.R. § 745.103.

18 22. On or around February 10, 2017, September 23, 2016, and June 5, 2017, Respondent
19 entered into sales contracts for the Punahale Property, the Kaumana Property, and the Haunani
20 Property, respectively.

21 23. On or around May 27, 2016, and June 15, 2015, Respondent entered into leases for
22 occupancies greater than 100 days (or 100 days or less where lease renewals or extensions could
23 occur) for the Puuhina Property and the Wainuku Property, respectively.

24 24. For the three-year period from the time that Respondent entered into the sales
25 contract for the Punahale Property, Respondent failed to retain a copy of the completed
26 attachment required under paragraph (a) of 40 C.F.R. § 745.113, as required by 40 C.F.R. §
27 745.113(c)(1).

28 25. At the time that Respondent entered into the sales contract for the Kaumana Property,

1 Respondent failed to include in the contract, as an attachment, a statement by the purchaser
2 affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(a)(2) and (3) and the lead
3 hazard information pamphlet required under 15 U.S.C. § 2696, as required by 40 C.F.R. §
4 745.113(a)(4).

5 26. At the time that Respondent entered into the sales contract for the Haunani Property,
6 Respondent failed to include in the contract, as an attachment, a Lead Warning Statement
7 containing language provided in 40 C.F.R. § 745.113(a)(1), as required by 40 C.F.R. §
8 745.113(a)(1).

9 27. At the time that Respondent entered into the sales contract for the Haunani Property,
10 Respondent failed to include in the contract, as an attachment, a statement by the purchaser that
11 he/she has either received the opportunity to conduct the risk assessment or inspection required
12 by 40 C.F.R. § 745.110(a) or waived the opportunity, as required by 40 C.F.R. § 745.113(a)(5).

13 28. At the time that Respondent entered into the leases for the Puuhina Property and the
14 Wainuku Property, Respondent failed to include in the leases, as an attachment or within the
15 contract, statements that the agents have informed the lessors of the lessors' obligations under
16 Section 1018 and the agents are aware of their duties to ensure compliance with the requirements
17 of 40 C.F.R. Part 745, Subpart F, as required by 40 C.F.R. § 745.113(b)(5).

18 29. At the time that Respondent entered into the lease for the Wainuku Property,
19 Respondent failed to include in the lease, as an attachment or within the contract, a statement by
20 the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and
21 the lead hazard information pamphlet required under 15 U.S.C. § 2696, as required by 40 C.F.R.
22 § 745.113(b)(4).

23 30. Each of Respondent's failures to comply with 40 C.F.R. § 745.113, as set forth in
24 Paragraphs 24 through 29, constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. §
25 2689, which can be assessed a penalty of up to \$16,000 per violation occurring on or before
26 November 2, 2015 and \$17,834 per violation occurring after November 2, 2015.

27 D. RESPONDENT'S ADMISSIONS

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

1 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
2 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
3 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
4 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
5 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
6 proposed Final Order contained in this CAFO.

7 E. CIVIL ADMINISTRATIVE PENALTY

8 32. In settlement of the violations specifically alleged in Section I.C of this CAFO,
9 Respondent shall pay a civil administrative penalty of SIX THOUSAND, NINE HUNDRED,
10 AND SIXTY-TWO DOLLARS (\$6,962). Respondent shall pay this civil penalty within thirty
11 (30) days of the effective date of this CAFO. The civil penalty shall be paid by remitting a
12 certified or cashier's check, including the name and docket number of this case, for the amount,
13 payable to "Treasurer, United States of America," (or be paid by one of the other methods listed
14 below) and sent as follows:

15
16 Regular Mail:

17 U.S. Environmental Protection Agency
18 Fines and Penalties
19 Cincinnati Finance Center
20 PO Box 979077
21 St. Louis, MO 63197-9000

22 Wire Transfers:

23 Wire transfers must be sent directly to the Federal Reserve Bank in New
24 York City with the following information:
25 Federal Reserve Bank of New York
26 ABA = 021030004
27 Account = 68010727
28 SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary = U.S. Environmental Protection Agency

Certified or Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

1 St. Louis, MO 63101

2 ACH (also known as Remittance Express or REX):

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

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

9 Physical location of U.S. Treasury facility:

10 5700 Rivertech Court
11 Riverdale, MD 20737

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

13 On Line Payment:

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

15 www.pay.gov
16 Enter "SFO 1.1" in the search field
17 Open form and complete required fields

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

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

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

Max Weintraub
Waste and Chemical Section
Enforcement Division (ENF-4-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

33. Respondent shall not use payment of any penalty under this CAFO as a tax deduction

1 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
2 use such payment as a tax deduction.

3 34. If Respondent fails to pay the assessed civil administrative penalty of SIX
4 THOUSAND, NINE HUNDRED, AND SIXTY-TWO DOLLARS (\$6,962), as identified in
5 Paragraph 32, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated
6 penalty to EPA of \$500 per day in addition to the assessed penalty. Stipulated penalties shall
7 accrue until such time as the assessed penalty and all accrued stipulated penalties are paid and
8 shall become due and payable upon EPA's written request. Failure to pay the civil administrative
9 penalty specified in Paragraph 32 by the deadline specified in that Paragraph may also lead to any
10 or all of the following actions:

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

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

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

24 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
25 Government may assess interest, administrative handling charges, and nonpayment penalties
26 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
27 civil administrative penalty specified in Paragraph 32 by the deadline specified in that Paragraph.

28 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.

1 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
2 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
3 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
4 (30) days of the effective date of this CAFO.

5 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
6 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,
7 based on either actual or average cost incurred (including both direct and indirect costs), for
8 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

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

12 F. CERTIFICATION OF COMPLIANCE

13 35. In executing this CAFO, Respondent certifies that it is now fully in compliance with
14 Section 1018 and federal regulations promulgated to implement Section 1018 at 40 C.F.R. Part
15 745, Subpart F.

16 G. RETENTION OF RIGHTS

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

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

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H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

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

J. BINDING EFFECT

40. 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.


41. 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 CENTURY 21 HOMEFINDERS OF HAWAII:

6/27/2019
DATE

MARTHA JONES
CEO
Century 21 Homefinders of Hawaii

FOR COMPLAINANT EPA:

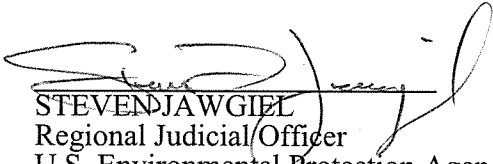
7/23/19
DATE

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

1 II. FINAL ORDER

2 EPA and Century 21 Homefinders of Hawaii having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2019-0060) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of SIX
6 THOUSAND, NINE HUNDRED, AND SIXTY-TWO DOLLARS (\$6,962), and comply with
7 the terms and conditions set forth in the Consent Agreement.

8
9
10 07/29/19
DATE


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

Certificate of Service

I hereby certify ^{a copy of} the attached Consent Agreement and Final Order was sent to Respondent by U.S. Certified Mail, Return Receipt Requested this 1st day of Aug, 2019 to:

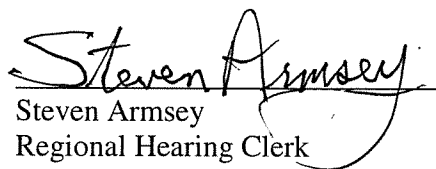
Martha Jones
CEO
Century 21 Homefinders of Hawaii
200 Kanoelehua Avenue
Hilo, HI 96720

Certified Mail # 7015 3010 0000 3883 7363

I hereby certify a copy of the Consent Agreement and Final Order was delivered to the following Agency Attorney:

Edgar Coral
U.S. EPA, Region IX
75 Hawthorne Street (ORC-2-2)
San Francisco, CA 94105

Aug. 1, 2019
Date


Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105