

FILED

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY 2013 SEP -4 AM 10: 29  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105

US EPA - REGION IX  
HEARING CLERK

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IN THE MATTER OF: )  
 )  
Destination Maui, Inc., )  
 )  
 )  
Respondent. )  
\_\_\_\_\_

Docket No. TSCA-09 - 2013 - 0010  
COMPLAINT AND NOTICE  
OF OPPORTUNITY FOR  
HEARING

PRELIMINARY STATEMENT

This is a civil administrative action initiated pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). Section 16(a) of TSCA and Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d (hereinafter "Section 1018"), authorize the Administrator of the United States Environmental Protection Agency ("EPA") to issue a civil complaint for each violation of Section 409 of TSCA, 15 U.S.C. § 2689.

Complainant is the Director of the Communities and Ecosystems Division, EPA Region IX, who has been duly delegated the authority to initiate this action. Respondent is Destination Maui, Inc., a Hawaii corporation with principle offices located in Wailuku, Hawaii.

This Complaint and Notice of Opportunity for Hearing ("Complaint") serves as notice that Complainant has reason to believe that Respondent violated Section 409 of TSCA by failing to comply with Section 1018 and its implementing regulations promulgated at 40 C.F.R. Part 745, Subpart F.

## GENERAL ALLEGATIONS

1. 40 C.F.R. Part 745, Subpart F implements the provisions of Section 1018 that impose certain disclosure requirements concerning lead-based paint and/or lead-based paint hazards upon the sale or lease of target housing.

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

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

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

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

6. Prior to a lessee being obligated under any contract subject to the requirements of 40 C.F.R. Part 745, Subpart F to lease target housing, the lessor shall provide the lessee with an EPA-approved lead hazard information pamphlet, *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001). 40 C.F.R. § 745.107(a)(1).

7. Each contract subject to the requirements of 40 C.F.R. Part 745, Subpart F to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

8. Each contract subject to the requirements of 40 C.F.R. Part 745, Subpart F to lease target housing shall include, as an attachment or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. 40 C.F.R. § 745.113(b)(2).

9. Each contract subject to the requirements of 40 C.F.R. Part 745, Subpart F to lease target housing shall include, as an attachment or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing that have been provided to the lessee or indicate that no such records or reports are available. 40 C.F.R. § 745.113(b)(3).

10. Each contract subject to the requirements of 40 C.F.R. Part 745, Subpart F to lease target housing shall include, as an attachment or within the contract, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696. 40 C.F.R. § 745.113(b)(4).

11. Each contract subject to the requirements of 40 C.F.R. Part 745, Subpart F to lease target housing shall include, as an attachment or within the contract, when an agent is involved in the transaction, a statement that the agent has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that the agent is aware of the duty to ensure compliance. 40 C.F.R. § 745.113(b)(5).

12. Each contract subject to the requirements of 40 C.F.R. Part 745, Subpart F to lease target housing shall include, as an attachment or within the contract, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature. 40 C.F.R. § 745.113(b)(6).

13. Each agent shall ensure compliance with all requirements of 40 C.F.R. Part 745, Subpart F, by informing the lessor of his/her obligations under §§ 745.107, 745.110, and 745.113; and ensuring that the lessor has performed all activities required under §§ 745.107, 745.110, and 745.113, or personally ensuring compliance with the requirements of §§ 745.107, 745.110, and 745.113. 40 C.F.R. § 745.115(a).

14. Failure to comply with any provision of 40 C.F.R. §§ 745.107 or 745.113 is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. 40 C.F.R. § 745.118(e).

15. Complainant has jurisdiction over this matter pursuant to Section 1018.

16. At all times relevant to this Complaint, Respondent was a corporation incorporated in the State of Hawaii with headquarters located at 841 Alua Street, Suite 102 in Wailuku, Hawaii.

17. At all times relevant to this Complaint, Respondent offered for lease, rent or sublease the residential properties located at 757 Pauoa Street, Lahaina, Hawaii; 7 Kaiu Place, Kihei, Hawaii; 713 Kekona Place, Makawao, Hawaii; 1838 Kaohu Street, Wailuku, Hawaii; 249 Muliwai Drive, Wailuku, Hawaii; 579 Kawelo Road, Haiku, Hawaii; 342 Nakoa Drive, Wailuku, Hawaii; 4145 Lower Kula Road, Kula, Hawaii; and 111 Kahului Beach Road, Kahului, Hawaii (collectively, the "Properties").



18. At all times relevant to this Complaint, the Properties were residential housing constructed prior to 1978 that were not zero-bedroom dwellings nor housing for the elderly or disabled.

19. At all times relevant to this Complaint, the Properties were "target housing," as that term is defined at 40 C.F.R. § 745.103.

20. At all times relevant to this Complaint, Respondent entered into contracts with the owners of the Properties to lease the Properties on behalf of the owners, and therefore was an "agent," as that term is defined at 40 C.F.R. § 745.103.

21. At all times relevant to this Complaint, Respondent was a "lessor" of the Properties, as that term is defined at 40 C.F.R. § 745.103.

22. Respondent entered into thirteen (13) leases for the Properties as follows:

Street Address	City	Date Lease Signed by Lessee
757 Pauoa Street	Lahaina	December 9, 2008; October 1, 2009 and June 22, 2011
7 Kaiiau Place	Kihei	October 1, 2009 and June 29, 2011
713 Kekona Place	Makawao	October 9, 2009
1838 Kaohu Street	Wailuku	September 3, 2010
249 Muliwai Drive	Wailuku	June 20, 2009
579 Kawelo Road	Haiku	February 16, 2009
342 Nakoa Drive	Wailuku	May 12, 2010 and March 21, 2011
4145 Lower Kula Road	Kula	May 4, 2011
111 Kahului Beach Road	Kahului	December 15, 2009

23. At all times relevant to this Complaint, each person who signed a lease identified in Paragraph 22 to pay rent in exchange for occupancy of one of the Properties was a "lessee," as that term is defined in 40 C.F.R. § 745.103.

24. Each lease identified in Paragraph 21 was either for a period of occupancy greater than 100 days or was subject to renewal.

**Counts 1-2**

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. For the lease entered into on June 22, 2011 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to provide to the lessee an EPA-approved lead hazard information pamphlet prior to the lessee being obligated under the lease.

27. For the lease entered into on October 1, 2009 for 7 Kaiiau Place, Kihei, Hawaii, Respondent failed to provide to the lessee an EPA-approved lead hazard information pamphlet prior to the lessee being obligated under the lease.

28. Respondent's failures to provide to the lessees to the leases identified above an EPA-approved lead hazard information pamphlet prior to the lessees being obligated under the leases constitutes two violations of 40 C.F.R. § 745.107(a)(1), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Count 3-11**

29. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30. For the lease entered into on December 9, 2008 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

31. For the lease entered into on October 1, 2009 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

32. For the lease entered into on October 9, 2009 for 713 Kekona Place, Makawao, Hawaii, Respondent failed to include, as an attachment to or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

33. For the lease entered into on September 3, 2010 for 1838 Kaohu Street, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

34. For the lease entered into on June 20, 2009 for 249 Muliwai Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

35. For the lease entered into on February 16, 2009 for 579 Kawelo Road, Haiku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

36. For the lease entered into on May 12, 2010 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

37. For the lease entered into on March 21, 2011 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

38. For the lease entered into on December 15, 2009 for 111 Kahului Beach Road, Kahului, Hawaii, Respondent failed to include, as an attachment to or within the lease, a Lead Warning Statement containing the language provided in 40 C.F.R. § 745.113(b)(1).

39. Respondent's failures to include, as an attachment to or within the leases identified above, a Lead Warning Statement constitutes nine violations of 40 C.F.R. § 745.113(b)(1), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Counts 12-20**

40. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

41. For the lease entered into on December 9, 2008 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the unit being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

42. For the lease entered into on October 1, 2009 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the unit being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

43. For the lease entered into on October 9, 2009 for 713 Kekona Place, Makawao, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the unit being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

44. For the lease entered into on September 3, 2010 for 1838 Kaohu Street, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by



Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the unit being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

45. For the lease entered into on June 20, 2009 for 249 Muliwai Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the unit being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

46. For the lease entered into on February 16, 2009 for 579 Kawelo Road, Haiku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the unit being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

47. For the lease entered into on May 12, 2010 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the unit being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

48. For the lease entered into on March 21, 2011 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in

the unit being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

49. For the lease entered into on December 15, 2009 for 111 Kahului Beach Road, Kahului, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the unit being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

50. Respondent's failures to include, as an attachment to or within the leases identified above, a statement by Respondent disclosing the presence of known lead-based paint and/or lead-based paint hazards in the units being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards constitutes nine violations of 40 C.F.R. § 745.113(b)(2), and Section 409 of TSCA, 15 U.S.C. § 2689.

#### Counts 21-29

51. Paragraphs 1 through 50 are realleged and incorporated herein by reference.

52. For the lease entered into on December 9, 2008 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessee or indicate that no such records or reports are available.

53. For the lease entered into on October 1, 2009 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint

hazards in the units that had been provided to the lessee or indicate that no such records or reports are available.

54. For the lease entered into on October 9, 2009 for 713 Kekona Place, Makawao, Hawaii, Respondent failed to include, as an attachment to or within the lease, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessee or indicate that no such records or reports are available.

55. For the lease entered into on September 3, 2010 for 1838 Kaohu Street, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessee or indicate that no such records or reports are available.

56. For the lease entered into on June 20, 2009 for 249 Muliwai Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessee or indicate that no such records or reports are available.

57. For the lease entered into on February 16, 2009 for 579 Kawelo Road, Haiku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessee or indicate that no such records or reports are available.

58. For the lease entered into on May 12, 2010 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessee or indicate that no such records or reports are available.

59. For the lease entered into on March 21, 2011 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessee or indicate that no such records or reports are available.

60. For the lease entered into on December 15, 2009 for 111 Kahului Beach Road, Kahului, Hawaii, Respondent failed to include, as an attachment to or within the lease, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessee or indicate that no such records or reports are available.

61. Respondent's failures to include, as an attachment to or within the leases identified above, a list of any records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint hazards in the units that had been provided to the lessees or an indication that no such records or reports are available constitutes nine violations of 40 C.F.R. § 745.113(b)(3), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Counts 30-40**

62. Paragraphs 1 through 61 are realleged and incorporated herein by reference.



63. For the lease entered into on December 9, 2008 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.
64. For the lease entered into on October 1, 2009 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.
65. For the lease entered into on June 22, 2011 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.
66. For the lease entered into on October 9, 2009 for 713 Kekona Place, Makawao, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.
67. For the lease entered into on September 3, 2010 for 1838 Kaohu Street, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.
68. For the lease entered into on June 20, 2009 for 249 Muliwai Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the

lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

69. For the lease entered into on February 16, 2009 for 579 Kawelo Road, Haiku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

70. For the lease entered into on May 12, 2010 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

71. For the lease entered into on March 21, 2011 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

72. For the lease entered into on October 1, 2009 for 7 Kaiiau Place, Kihei, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

73. For the lease entered into on December 15, 2009 for 111 Kahului Beach Road, Kahului, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§

745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696.

74. Respondent's failures to include, as an attachment to or within the leases identified above, a statement by the lessees affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 constitutes eleven violations of 40 C.F.R. § 745.113(b)(4), and Section 409 of TSCA, 15 U.S.C. § 2689.

#### Counts 41-52

75. Paragraphs 1 through 74 are realleged and incorporated herein by reference.

76. For the lease entered into on December 9, 2008 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance.

77. For the lease entered into on October 1, 2009 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance:

78. For the lease entered into on October 9, 2009 for 713 Kekona Place, Makawao, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance:

79. For the lease entered into on September 3, 2010 for 1838 Kaohu Street, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance.

80. For the lease entered into on June 20, 2009 for 249 Muliwai Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance.

81. For the lease entered into on February 16, 2009 for 579 Kawelo Road, Haiku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance.

82. For the lease entered into on May 12, 2010 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance.

83. For the lease entered into on March 21, 2011 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance.

84. For the lease entered into on May 4, 2011 for 4145 Lower Kula Road, Kula, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it,



as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance.

85. For the lease entered into on October 1, 2009 for 7 Kaiiau Place, Kihei, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance.

86. For the lease entered into on June 29, 2011 for 7 Kaiiau Place, Kihei, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance.

87. For the lease entered into on December 15, 2009 for 111 Kahului Beach Road, Kahului, Hawaii, Respondent failed to include, as an attachment to or within the lease, a statement that it, as the agent, has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance.

88. Respondent's failures to include, as an attachment to or within the leases identified above, a statement that it has informed the lessor of the lessor's obligations under 42 U.S.C. § 4852d and that it is aware of the duty to ensure compliance constitutes twelve violations of 40 C.F.R. § 745.113(b)(5), and Section 409 of TSCA, 15 U.S.C. § 2689.

**Counts 53 - 61**

89. Paragraphs 1 through 88 are realleged and incorporated herein by reference.

90. For the lease entered into on December 9, 2008 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, the signature of

Respondent and the lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

91. For the lease entered into on October 1, 2009 for 757 Pauoa Street, Lahaina, Hawaii, Respondent failed to include, as an attachment to or within the lease, the signature of Respondent and the lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

92. For the lease entered into on October 9, 2009 for 713 Kekona Place, Makawao, Hawaii, Respondent failed to include, as an attachment to or within the lease, the signature of Respondent and the lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

93. For the lease entered into on September 3, 2010 for 1838 Kaohu Street, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, the signature of Respondent and the lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

94. For the lease entered into on June 20, 2009 for 249 Muliwai Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, the signature of Respondent and the lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

95. For the lease entered into on February 16, 2009 for 579 Kawelo Road, Haiku, Hawaii, Respondent failed to include, as an attachment to or within the lease, the signature of Respondent and the lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

96. For the lease entered into on May 12, 2010 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, the signature of Respondent and the lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

97. For the lease entered into on March 21, 2011 for 342 Nakoa Drive, Wailuku, Hawaii, Respondent failed to include, as an attachment to or within the lease, the signature of Respondent and the lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

98. For the lease entered into on December 15, 2009 for 111 Kahului Beach Road, Kahului, Hawaii, Respondent failed to include, as an attachment to or within the lease, the signature of Respondent and the lessee certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

99. Respondent's failures to include, as an attachment to or within the leases identified above, the signatures of Respondent and the lessees certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature, constitutes nine violations of 40 C.F.R. § 745.113(b)(6), and Section 409 of TSCA, 15 U.S.C. § 2689.

#### **PROPOSED CIVIL PENALTY**

Section 16(a) of TSCA and Section 1018 authorize the Administrator of the United States Environmental Protection Agency ("EPA") to assess a civil penalty not to exceed \$10,000 per day for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. *See also* 40 C.F.R. §§ 745.118(e) and (f). This statutory maximum civil penalty has been raised to \$11,000 per day for each violation that occurred before January 12, 2009 and to \$16,000 per day for each violation

that occurred after January 12, 2009 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and its implementing regulation, the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19.

Based upon the nature, circumstances, extent, and gravity of the violations alleged above and, with respect to the violator, ability to pay, effect on ability to continue to do business, and history of prior such violations, the degree of culpability, and other factors as justice may require, and as set forth in Section 16(a)(2)(B) of TSCA, Complainant requests that the Administrator assess against Respondent a civil penalty of up to \$11,000 for each violation that occurred on or before January 12, 2009 and up to \$16,000 for each violation that occurred after January 12, 2009.

#### **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

As provided in Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

**You must file a written Answer within thirty (30) days of receiving this Complaint to avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing, and to avoid having the above penalty assessed without further proceedings.** If you choose to file an Answer, you are required by the



Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny any of the allegations in this Complaint will constitute an admission of the undenied allegation.

The Answer shall also state the circumstances and arguments, if any, which are alleged to constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If you deny any material fact or raise any affirmative defense, you will be considered to have requested a hearing.

The Answer must be filed with:

**Regional Hearing Clerk  
USEPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105**

In addition, please send a copy of the Answer and all other documents filed in this action to:

**Ivan Lieben  
Assistant Regional Counsel  
Office of Regional Counsel (ORC-2)  
USEPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105**

Mr. Lieben is the attorney assigned to represent EPA in this matter. His telephone number is (415) 972-3914.

You are further informed that the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

### **INFORMAL SETTLEMENT CONFERENCE**

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with EPA through Mr. Lieben, the EPA attorney assigned to this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility of settlement. **An informal settlement conference does not, however, affect your obligation to file an Answer to this Complaint.**

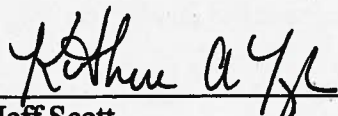
### **ALTERNATIVE DISPUTE RESOLUTION**

The parties also may engage in any process within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et seq., which may facilitate voluntary settlement efforts. Dispute resolution using alternative means of dispute resolution does not divest the Presiding Officer of jurisdiction nor does it automatically stay the proceeding.

### **CONSENT AGREEMENT AND FINAL ORDER**

EPA has the authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference or through alternative dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by the parties would be binding as to all terms and conditions specified therein for the parties signing the Consent Agreement when the Regional Judicial Officer signs the Final Order.

DATE: 9/04/13

  
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Jeff Scott  
Director, Communities and Ecosystems Division  
U.S. Environmental Protection Agency, Region IX