

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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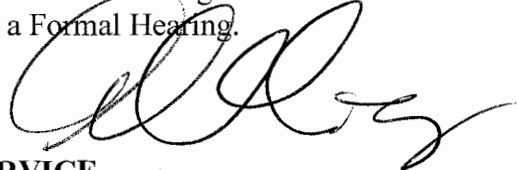
In the Matter of:	)	Docket No. TSCA-05-2008-0010
Trust No. 98-123, Genghiskhan Xiong,	)	
Hu Xiong, Chuhu Xiong and	)	Proceeding to Assess a Civil Penalty
Maivtshiab Xiong	)	Under Section 16(a) of the Toxic
Chicago, Illinois	)	Substance Control Act, 15 U.S.C.
Respondents.	)	§ 2615(a)

**NOTICE OF FILING**

To: Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Luis Oviedo (C-14J)  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

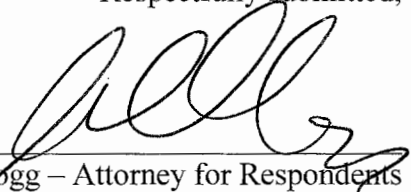
PLEASE TAKE NOTICE that on the 2nd day of June, 2008, the following documents were filed with the Regional Hearing Clerk, and the Associate Regional Counsel of U.S. EPA Region 5: Answer to Complaint, Request for a Formal Hearing.



**NOTICE OF SERVICE**

I, DENNIS J. KELLOGG served this notice to the persons by hand delivery on June 2nd, 2008.

Respectfully submitted,

  
Dennis J Kellogg – Attorney for Respondents

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL RECEIVED  
US EPA REGION 5 CLERK  
DATE: 05/13/08 TIME: 3:39

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In the Matter of: ) Docket No. TSCA-05-2008-0010  
)  
Trust No. 98-123, Genghiskhan Xiong, ) Proceeding to Assess a Civil Penalty  
Hu Xiong, Chuhu Xiong and ) Under Section 16(a) of the Toxic  
Maivtshiab Xiong ) Substance Control Act, 15 U.S.C.  
Chicago, Illinois ) § 2615(a)  
Respondents. )  
\_\_\_\_\_ )

ANSWER TO COMPLAINT

NOW COMES the Respondents, GENGHISKAN XIONG, HU XIONG, CHUHU XIONG, and MAIVTSHIAB XIONG, by and through their attorney, DENNIS J. KELLOGG, for their Answer to Complaint, states as follows:

1. This is an administrative proceeding to assess a civil penalty under Section 16 (a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

**ANSWER: The Respondents admit the allegations contained in Paragraph 1 of the Complaint.**

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

**ANSWER: The Respondents admit the allegations contained in Paragraph 2 of the Complaint.**

3. Respondents are Trust No. 98-123, Genghiskhan Xiong, Hu Xiong, Chuhu Xiong and Maivtshiab Xiong of Chicago, Illinois (cumulatively referred to hereafter as "Respondents"). Trust No. 98-123 is administered by Bridgeview Bancorp, Inc., also known as Bridgeview Bank Uptown.

**ANSWER: The Respondents admit that Genghiskan Xiong, Hu Xiong, and Maivtshiab Xiong are the Respondents. Chuhu Xiong is the same person as Hu Xiong. The Respondents admit Trust No. 98-123 is administered by Bridgeview Bancorp, Inc., also known as Bridgeview Bank Uptown.**

**Statutory and Regulatory Background**

4. In promulgating Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements for residential rentals and sales. 42 U.S.C. § 4852d (Section 1018) requires the Administrator and the Secretary of the United States Department of Housing and Urban Development (HUD) to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

**ANSWER: The Respondents admit the allegations contained in Paragraph 4 of the Complaint.**

5. On March 6, 1996, U.S. EPA and HUD promulgated regulations at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, respectively, "Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property"

(Disclosure Rule), pursuant to 42 U.S.C. § 4852d. Owners of more than four residential dwellings must comply with 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

**ANSWER: The Respondents admit the allegations contained in Paragraph 5 of the Complaint.**

6. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the lease of target housing.

**ANSWER: The Respondents admit the allegations contained in Paragraph 6 of the Complaint.**

7. 40 C.F.R. § 745.103 defines "target housing" as 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.

**ANSWER: The Respondents admit the allegations contained in Paragraph 7 of the Complaint.**

8. 40 C.F.R. § 745.103 defines "owner" as any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

**ANSWER: The Respondents admit the allegations contained in Paragraph 8 of the Complaint.**

9. 40 C.F.R. § 745.103 defines "lessor" as 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.

**ANSWER: The Respondents admit the allegations contained in Paragraph 9 of the Complaint.**

10. 40 C.F.R. § 745.103 defines "lessee" as any individual 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.

**ANSWER: The Respondents admit the allegations contained in Paragraph 10 of the Complaint.**

11. 40 C.F.R. § 745.103 defines "agent" as 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.

**ANSWER: The Respondents admit the allegations contained in Paragraph 11 of the Complaint.**

12. 40 C.F.R. § 745.100 requires, among other things, that a lessor or seller of target housing complete the specified disclosure activities before a lessee or purchaser is obligated under any contract to lease or purchase target housing.

**ANSWER: The Respondents admit the allegations contained in Paragraph 12 of the Complaint.**

13. 40 C.F.R. § 745.113 (b) requires that each lease for target housing include as an attachment or within the lease itself a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a

statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113 (b) (2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessors, agents, and lessees certifying the accuracy of their statements.

**ANSWER: The Respondents admit the allegations contained in Paragraph 13 of the Complaint.**

14. Under 42 U.S.C. § 4852d (b) (5) and 40 C.F.R. § 745.118 (e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16 (a) of TSCA, 15 U.S.C. § 2615 (a), 40 C.F.R. § 745.118 (t), and 42 U.S.C. § 4852d (b) (5).

**ANSWER: The Respondents admit the allegations contained in Paragraph 14 of the Complaint.**

15. Section 1018 (b) (5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d (b) (5), and 40 C.F.R. § 745.118 (f), authorize the Administrator of U.S. EPA to assess a civil penalty under Section 16 (a) of TSCA of up to \$10,000 for each violation of Section 409 of TSCA. U.S. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997. 40 C.F.R. § 745.118(f) and 40 C.F.R. Part 19.

**ANSWER: The Respondents admit the allegations contained in Paragraph 15 of the Complaint.**

**General Allegations**

16. Complainant incorporates paragraphs 1 through 15 of this Complaint as if set forth in this paragraph.

**ANSWER: The Respondents incorporate the responses given in paragraphs 1 through 15 of this Answer as if set forth in this paragraph.**

17. During the period including August 23, 2000 through July 1, 2005, Genghiskhan Xiong and Maivtshiab Xiong, owned the property at 5680-82 North Ridge Avenue in Chicago, Illinois (Residential Rental Property) either directly or through Trust No. 98-123. As of the time of the filing of this Complaint, Genghiskhan Xiong and Maivtshiab Xiong continue to hold beneficial interest in Trust No. 98-123.

**ANSWER: The Respondents admit the allegations contained in Paragraph 17 of the Complaint.**

18. During the period including August 23, 2000 through July 1, 2005, Respondents Hu Xiong and Chuhu Xiong acted as management agents for Respondents Genghiskhan Xiong and Maivtshiab Xiong by holding themselves out as having the legal capacity to enter into binding lease agreements with tenants at the Residential Rental Property and signing lease agreements for the same. Respondents Hu Xiong and Chuhu Xiong acted directly as lessors, or in their capacity as agents of Respondents Genghiskhan Xiong and Maivtshiab Xiong.

**ANSWER: The Respondents deny the allegations in paragraph 18 of the Complaint.**

19. The Residential Rental Property was constructed prior to 1978.

**ANSWER: The Respondents admit the allegations contained in Paragraph 19 of the Complaint.**

20. The Residential Rental Property and each rental unit within such property is "target housing" as defined in 40 C.F.R. § 745.103.

**ANSWER: The Respondents admit the allegations contained in Paragraph 20 of the Complaint.**

21. Between March 1, 2004 and July 1, 2005, Respondents offered several units for lease and entered into no less than five written rental agreements ("Rental Contracts") with individuals for the lease of units located at the Residential Rental Property.

**ANSWER: The Respondents deny the allegations contained in Paragraph 21 of the Complaint.**

22. Respondent Genghiskhan Xiong signed the lease agreement for the units referenced under Lease #1 and 2, below. Hu Xiong signed the lease agreement for the units referenced under Lease #4 and 5, below. Chuhu Xiong signed the lease agreement for the unit referenced under Lease #3, below.

**ANSWER: The Respondents deny the allegations contained in Paragraph 22 of the Complaint.**

23. The units that were the subject of the Rental Contracts and lease dates are identified as:

Lease No.	Address	Unit	Date of Lease
1	5680 North Ridge Avenue	2 <sup>nd</sup> Floor	03/01/2004
2	"	3 <sup>rd</sup> Floor	01/01/2005
3	5682 North Ridge Avenue	2 <sup>nd</sup> Floor	03/31/2004
4	"	2	05/01/2005
5	"	3N	07/01/2005

**ANSWER: The Respondents admit the allegations pertaining to leases 1, 2, 4, and 5, and deny the remainder of the allegations in Paragraph 23.**

24. Each of the Rental Contracts covered a term of occupancy greater than 100 days.



**ANSWER: The Respondents admit the allegations pertaining to leases 1, 2, 4, and 5, and deny the remainder of the allegations in Paragraph 24.**

25. All of the Respondents are "lessors," as defined by 40 C.F.R. § 745.103.

**ANSWER: The Respondents admit the allegations contained in Paragraph 25 of the Complaint.**

26. Respondents Hu Xiong and Chuhu Xiong are "agents" as defined by 40 C.F.R. § 745.103.

**ANSWER: The Respondents deny the allegations contained in Paragraph 26 of the Complaint.**

27. Each individual who signed a lease to pay rent in exchange for occupancy of a unit at the Residential Rental Properties, became a "lessee," as defined in 40 C.F.R. § 745.103, since he or she entered into an agreement to lease target housing.

**ANSWER: The Respondents admit the allegations contained in Paragraph 27 of the Complaint.**

28. On or about February 4, 2005, Respondents received written notices from the Chicago Department of Public Health (CDPH), Childhood Lead Poisoning Prevention Program regarding lead hazards found at the Residential Rental Property. Each of the notices issued to the Respondents provided them with actual notice about the condition of the Residential Rental Property and the presence of lead-based paint and/or lead-based paint hazards.

**ANSWER: The Respondents admit the allegations contained in Paragraph 28 of the Complaint.**

29. On January 31, 2007, Respondents' legal counsel received a pre-filing notice letter

from U.S. EPA. The letter advised Respondents that U.S. EPA intended to file a civil administrative complaint against Respondents for violations of Section 1018, and that the complaint would seek a civil penalty of \$42,916. At that time, U.S. EPA also asked Respondents to identify any factors Respondents thought U.S. EPA should consider before issuing the complaint, and to submit specific financial documents bearing on any assertion of Respondents' inability to pay the proposed penalty.

**ANSWER: The Respondents deny the allegations contained in Paragraph 29 of the Complaint.**

30. Despite repeated inquiries made by the U.S. EPA, as of April 4, 2007, Respondents have failed to provide facts or submit any documents to substantiate any inability to pay defense, or to assert such a defense. Complainant has considered all of the information provided by Respondents in assessing the alleged violations and proposing a penalty.

**ANSWER: The Respondents deny the allegations contained in Paragraph 30 of the Complaint.**

31. Respondents have the ability to pay the proposed penalty of \$42,916.

**ANSWER: The Respondents deny the allegations contained in Paragraph 31 of the Complaint.**

#### **Counts 1 through 5**

32. Complainant incorporates paragraphs 1 through 31 of this Complaint as if set forth in this paragraph.

**ANSWER: The Respondents incorporate the responses given in paragraphs 1 through 31 of this Answer as if set forth in this paragraph.**

33. 40 C.F.R. § 745.100 requires, among other things, that the lessor of target housing complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113 (b) (2) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence, before a lessee is obligated under the contract to lease target housing. Additionally, 40 C.F.R. § 745.100 and 40 C.F.R. § 745.113 (b) (2) require that, before a lessee is obligated under a contract to lease target housing, a lessor must disclose any additional information available concerning known lead-based paint and/or lead-based paint hazards.

**ANSWER: The Respondents admit the allegations contained in Paragraph 33 of the Complaint.**

34. Count 1: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in the March 1, 2004 contract for the unit referenced under Lease #1, above.

**ANSWER: The Respondents deny the allegations contained in Paragraph 34 of the Complaint.**

35. Count 2: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 3rd Floor, Chicago, Illinois, a statement disclosing either the presence of any known lead-based paint and/or lead-based

paint hazards in the target housing, or a lack of knowledge of such presence in the January 1, 2005 contract for the unit referenced under Lease #2, above.

**ANSWER: The Respondents deny the allegations contained in Paragraph 35 of the Complaint.**

36. Count 3: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in the March 31, 2004 contract for the unit referenced under Lease #3, above.

**ANSWER: The Respondents deny the allegations contained in Paragraph 36 of the Complaint.**

37. Count 4: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2, Chicago, Illinois, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in the May 1, 2005 contract for the unit referenced under Lease #4, above.

**ANSWER: The Respondents deny the allegations contained in Paragraph 37 of the Complaint.**

38. Count 5: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 3N, Chicago, Illinois, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in the July 1, 2005 contract for the unit referenced under Lease #5, above.

**ANSWER: The Respondents do not have sufficient information to either admit or deny the allegations contained in Paragraph 38 of this Complaint.**

39. Respondents' failure to include, either within each contract or as an attachment to each contract, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in each contract for each leasing transaction referenced above, constitutes five violations of 40 C.F.R. § 745.113 (b) (2), 42 U.S.C. § 4852d (b) (5), and of Section 409 of TSCA.

**ANSWER: The Respondents deny the allegations contained in Paragraph 39 of the Complaint.**

**Counts 6 through 10**

40. Paragraphs 1 through 39, above, are realleged and incorporated here by reference.

**ANSWER: The Respondents incorporate the responses given in Paragraphs 1 through 39 of this Answer as if set forth in this Paragraph.**

41. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113 (b) (3) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist.

**ANSWER: The Respondents admit the allegations contained in Paragraph 41 of the Complaint.**

42. Count 6: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist in the March 1, 2004 contract for the unit referenced under Lease #1, above.

**ANSWER: The Respondents admit the allegations contained in Paragraph 42 of the Complaint.**

43. Count 7: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 3rd Floor, Chicago, Illinois, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist in the January 1, 2005 contract for the unit referenced under Lease #2, above.

**ANSWER: The Respondents admit the allegations contained in Paragraph 43 of the Complaint.**

44. Count 8: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist in the March 31, 2004 contract for the unit referenced under Lease #3, above.

**ANSWER: The Respondents deny the allegations contained in Paragraph 44 of the Complaint.**

45. Count 9: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2, Chicago, Illinois, a list of any

records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist in the May 1, 2005 contract for the unit referenced under Lease #4, above.

**ANSWER: The Respondents deny the allegations contained in Paragraph 45 of the Complaint.**

46. Count 10: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 3N, Chicago, Illinois, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist in the July 1, 2005 contract for the unit referenced under Lease #5, above.

**ANSWER: The Respondents do not have enough information to either admit or deny the allegations in Paragraph 46.**

47. Respondents' failure to include, either within each contract or as an attachment to each contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist, for each leasing transaction referenced above, constitutes five violations of 40 C.F.R. § 745.113(b) (3), 42 U.S.C. § 4852d (b) (5), and of Section 409 of TSCA.

**ANSWER: The Respondents deny the allegations contained in Paragraph 47 of the Complaint.**

**Counts 11 through 15**

48. Paragraphs 1 through 47, above, are realleged and incorporated here by reference.

**ANSWER: The Respondents incorporate the responses given in Paragraphs 1 through 47 of this Answer as if set forth in this Paragraph.**

49. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113 (b) (4) requires the lessor to include, either within each contract or as an attachment to each contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113 (b) (2) and (b) (3), and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

**ANSWER: The Respondents admit the allegations contained in Paragraph 49 of the Complaint.**

50. Count 11: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113 (b) (2) and (b) (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 in the May 1, 2004 contract for the unit referenced under Lease #1, above.

**ANSWER: The Respondents admit the allegations contained in Paragraph 50 of the Complaint.**

51. Count 12: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 3rd Floor, Chicago, Illinois, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113 (b) (2) and (b) (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 in the January 1, 2005 contract for the unit referenced under Lease #2, above.

**ANSWER: The Respondents admit the allegations contained in Paragraph 51 of the Complaint.**



52. Count 13: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113 (b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 in the March 31, 2004 contract for the unit referenced under Lease #3, above.

**ANSWER: The Respondents deny the allegations contained in Paragraph 52 of the Complaint.**

53. Count 14: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2, Chicago, Illinois, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113 (b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 in the May 1, 2005 contract for the unit referenced under Lease #4, above.

**ANSWER: The Respondents deny the allegations contained in Paragraph 53 of the Complaint.**

54. Count 15: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 3N, Chicago, Illinois, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 in the July 1, 2005 contract for the unit referenced under Lease #5, above.

**ANSWER: The Respondents do not have enough information to either admit or deny the allegations contained in Paragraph 54 of the Complaint.**

55. Respondents' failure to include, either within each contract or as an attachment to

each contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113 (b) (2) and (b) (3), and the Lead Hazard Information Pamphlet under 15 U.S.C. § 2689 for each leasing transaction referenced above, constitutes five violations of 40 C.F.R. § 745.113 (b) (4), 42 U.S.C. § 4852d (b) (5), and of Section 409 of TSCA.

**ANSWER: The Respondents deny the allegations contained in Paragraph 55 of the Complaint.**

**Counts 16 through 20**

56. Paragraphs 1 through 55, above, are realleged and incorporated here by reference.

**ANSWER: The Respondents incorporate the responses given in Paragraphs 1 through 55 of this Answer as if set forth in this Paragraph.**

57. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. § 745.113 (b) (6) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, 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.

**ANSWER: The Respondents admit the allegations contained in Paragraph 57 of the Complaint.**

58. Count 16: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 2nd Floor, Chicago, Illinois, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements along with the dates of such signature in the March 1, 2004 contract for the unit referenced under Lease #1, above.

**ANSWER: The Respondents admit the allegations contained in Paragraph 58 of the Complaint.**

59. Count 17: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 3rd Floor, Chicago, Illinois, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements along with the dates of such signature in the January 1, 2005 for the unit referenced under Lease #2, above.

**ANSWER: The Respondents admit the allegations contained in Paragraph 59 of the Complaint.**

60. Count 18: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2nd Floor, Chicago, Illinois, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements along with the dates of such signature in the March 31, 2004 .contract for the unit referenced under Lease #3, above.

**ANSWER: The Respondents deny the allegations contained in Paragraph 60 of the Complaint.**

61. Count 19: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2, Chicago, Illinois, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements along with the dates of such signature in the May 1, 2005 contract for the unit referenced under Lease #4, above.

**ANSWER: The Respondents deny the allegations contained in Paragraph 61 of the Complaint.**

62. Count 20: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 3N, Chicago, Illinois, the signatures of the lessors, agents and lessees certifying to the accuracy of their statements along with the dates of such signature in the July 1, 2005 contract for the unit referenced under Lease #5, above.

**The Respondents do not have enough information to either admit or deny the allegations contained in Paragraph 62 of the Complaint.**

63. Respondents' failure to include, either within each contract or as an attachment to each contract, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements or the dates of such signature for each leasing transaction referenced above, constitutes five violations of 40 C.F.R. § 745.113 (b) (6), 15 U.S.C. § 2689, 42 U.S.C. § 4852d (b) (5).

**ANSWER: The Respondents deny the allegations contained in Paragraph 63 of the Complaint.**

#### **AFFIRMATIVE DEFENSES**

64. An addendum complying with all requirements of 40 C.F.R. 745.113 (b) was added to Lease #4 on May 1, 2006.

#### **Prior Settlement**

65. On October 19, 2007, the Respondents and their counsel attended an informal settlement conference in regard to the aforementioned violations at the offices of the U.S. EPA, Region 5.

66. The proposed settlement included a Supplemental Environmental Project in the form of a Window Replacement Project designed to protect tenants from potential lead-based paint hazards by replacing windows in the rental property.

67. Genghiskhan Xiong stated in the settlement conference that he intended to replace the windows himself.

68. Genghiskhan Xiong completed the 4-day EPA model curriculum for supervisors and contractors based on the Specifications of Lead-Based Paint: HUD Interim Guidelines (6-95); Illinois Department of Public Health, Lead Poisoning Prevention Code 77 ILL ADM Code 845 (12-94); Title X, Housing and Community Development Act (1992); and successfully passed the examination on July 19, 2007.

69. Genghiskhan Xiong replaced all the windows in his building as specified by the settlement agreement, incurring at least \$20,000.00 in expenses.

70. On October 23, 2007, the Associate Regional Counsel, Luis A. Oviedo, wrote a letter to the Respondents' counsel stating that Genghiskhan Xiong could not replace the windows in accordance with the settlement agreement because at the time he was not a "certified lead abatement contractor."

71. There is no discernable difference in the work done by Genghiskhan Xiong, and the work that would have been done by a "certified lead abatement contractor."

72. Genghiskhan Xiong replacing the windows himself was substantial compliance with the settlement agreement, and accordingly this complaint is improper.

#### **Penalty Mitigation**

73. Paragraphs 64 through 72, above, are realleged and incorporated here by reference.

74. The U.S. EPA calculates penalties through the application of the U.S. EPA's "Section 1018 – Disclosure Rule Enforcement Response Policy," (DRERP) dated February 2000.

75. Chapter 7, Subchapter IV, Part A of the EPA's February 2000 DRERP states that "EPA will adjust the proposed penalty downward 80% if the responsible party provides EPA with appropriate documentation (e.g. reports for lead inspection conducted in accordance with HUD guidelines) that the target housing is certified to be lead-based paint free by a certified inspector."

76. The target housing in question, the property at 5680-82 North Ridge Avenue in Chicago, IL, is currently lead-based paint free.

77. The EPA would allow an 80% reduction in the penalty amount when the Respondents can provide the appropriate documentation that the property is now lead based paint free.

78. According to 42 U.S.C. 4851a (1), one of the primary purposes of the Residential Lead Based Paint Hazard Reduction Act of 1992 was to eliminate lead-based paint hazards in all housing as expeditiously as possible.

79. Allowing a reduction in the penalty amount because the respondents removed all lead based paint from the property at 5680-82 North Ridge Avenue in Chicago, IL, is wholly consistent with the purposes outlined in 42 U.S.C. 4851a (1), and otherwise comports with the other purposes defined in 42 U.S.C. 4851a.

80. Chapter 7, Subchapter IV, Part B, Subpart (b) of the EPA's February 2000 DRERP states that "The EPA may reduce the base penalty up to 10% for a respondent's

immediate good faith efforts to comply with the Disclosure Rule and the speed and completeness with which it comes into compliance.”

81. The Respondents began full compliance with the Disclosure Rule upon receipt of the initial Noncompliance Notice dated January 29, 2007.

82. The Respondents are entitled to a reduction in the amount of the penalty because of their complete and immediate good faith efforts to comply with the Disclosure Rule.

83. Chapter 7, Subchapter IV, Part C of the EPA’s February 2000 DRERP states that “Supplemental Environmental Projects (SEPs) are environmentally-beneficial projects which a respondent agrees to undertake in settlement of an environmental enforcement action, but which the defendant is not otherwise legally required to perform. In return, the cost of the SEP reduces the amount of the final penalty paid by the respondent.”

84. The Respondents are entitled to a reduction in the amount of the penalty corresponding to the expenses they incurred substantially complying with the Supplemental Environmental Project the Respondents agreed to conduct as part of their settlement agreement.

85. The Respondents are entitled to a reduction in the penalty amount due to financial hardship per Section 16 of Toxic Substances Control Act, 15 U.S.C. § 2615(a).

86. The Respondents are entitled to a reduction in the penalty amount

#### **Small Business Policy**

87. Paragraphs 64 through 86, above, are realleged and incorporated here by reference.

88. Chapter 7, Subchapter IV, Part F of the EPA’s February 2000 DRERP states that “Given the universe of parties covered by the Disclosure Rule, a violator may request

assistance under the EPA's Policy on Compliance Incentives for Small Business ("Small Business Policy") (June 10, 1996). The Small Business Policy states that a business with fewer than 100 employees is eligible for elimination of the entire civil penalty if the violator participates in the compliance assistance program or conducts a voluntary self-audit and meets all four criteria listed in the Small Business Policy. The four criteria are: 1) the violator has made a good faith effort to comply with the applicable environmental requirements; 2) the violator has violated the applicable environmental requirement for the first time; 3) the violator has remedied the violation within a specified time; and 4) the violation does not present a significant health or environmental threat and does not involve criminal conduct. Regions."

89. The Respondents have fewer than 100 employees.

90. The Respondents have made a good faith effort to comply with the applicable environmental requirements

91. The Respondents have violated the applicable environmental requirement for the first time.

92. The Respondents remedied the violation within the required specified time.

93. The Respondents' violation(s) neither presented a significant health nor involved criminal conduct.

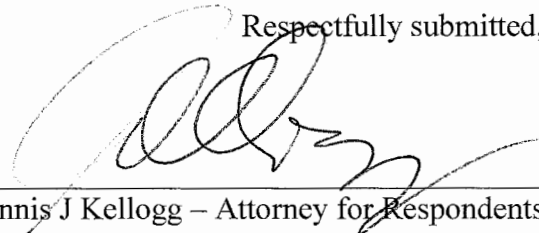
94. If the Respondents were to participate in the compliance assistance program they would be entitled to 100% reduction of the penalty.

95. If the Respondents conducted a voluntary self-audit they would be entitled to 100% reduction of the penalty.



WHEREFORE the Respondents pray that the Complaint either be dismissed on the basis of substantial compliance with the settlement agreement reached on October 19th, 2007, or on the merits of the case; or that the penalty amount be drastically reduced on the basis of substantial compliance with the settlement agreement, or by the guidelines provided in the U.S. EPA's Section 1018 – Disclosure Rule Enforcement Response Policy; or that the penalty amount be reduced by 100% in accordance with the “U.S. EPA's Small Business Policy.”

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis J Kellogg", is written over a horizontal line. The signature is fluid and cursive.

Dennis J Kellogg – Attorney for Respondents

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