

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:

Docket No.: TSCA-05-2008-0012

One Management, Inc.,
L & J Investment, Inc., and
One Management Investment Group,
Detroit, Michigan,

Hon. William B. Moran

**RESPONDENTS' INITIAL
PREHEARING EXCHANGE**

Respondents.

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The Respondents One Management, Inc., L & J Investment, Inc., and One Management Investment Group respectfully submit the following Respondents' Initial Prehearing Exchange pursuant to § 22.19 of the Consolidated Rules of Practice, being 40 C.F.R. §22.19.¹

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¹ The Respondents' have previously requested a reasonable extension of time to June 26, 2009 by which they may make their initial prehearing exchange (Respondents' May 22, 2009 Response to Motion, ¶B, pp. 3-4). The Complainant "takes no position" in response to the

I. EXPECTED WITNESSES.

This section includes the names of the witnesses whom the Respondents may call to testify, together with a brief narrative summary of each witness' expected testimony:

A. Fact Witnesses.

1. Jerry Watha. Mr. Watha is President of One Management, Inc. It is anticipated that Mr. Watha may testify regarding the nature, existence, status and activities of the Respondents; the Respondents' inability to pay the penalty sought by the Complainant and the inability of the Respondents to continue in business if said penalty is imposed; the financial affairs and circumstances of the Respondents' business activities; the Respondents' assets, liabilities, income and expenses; the Respondents' financial liabilities, claims made by other parties and the status thereof; Respondents' efforts to comply with the residential Lead-Based Paint Hazard Reduction Act, being 42 U.S.C. §§4851-4856 and the Toxic Substances Control Act, 15 U.S.C. §§2601-2692 and the rules promulgated pursuant to said statutes; personal financial affairs of Jerry Watha and Fattin Watha; rebuttal of Complainant's claims and testimony regarding the same; authentication or exhibits; performance of lead-based paint abatement activities and resolution of the Wayne County enforcement proceeding; expenditures incurred in regard to lead-based paint inspection and abatement activities; borrowing on various credit cards in an attempt to maintain Respondents' business; business and personal income and expenses; business and personal debts and the status thereof; business and personal assets and encumbrances thereupon.

2. Fattin Watha. Wife of Mr. Jerry Watha (¶1, above); personal financial affairs and status of Jerry Watha and Fattin Watha; liabilities of the same; inability to pay the Complainant's proposed penalty; borrowing on various credit cards in an attempt to maintain Respondents' business; income (if any) and expenses; liabilities, assets and encumbrances thereupon.

3. Steven H. Magie, CPA, 465 Stephenson Highway, Troy, MI 48083.² Preparation of the Respondents' income tax returns; authentication thereof absent a stipulation regarding the same; information contained within the income tax returns; Respondents' inability to pay the penalty; Respondents' inability to continue in business upon imposition of the penalty.

4. David Bouchering, People's State Bank, 1800 East 12 Mile Road, Madison Heights, MI 48071. Loan officer at People's State Bank; business relationship and transactions with one or more of the Respondents and Mr. and/or Mrs. Watha; state of the Respondents' financial affairs; People's State Bank loans to one or more of the Respondents;

Respondents' request (Complainant's May 29, 2009 Reply to Respondents' Response to Motion, p. 1).

² Mr. Magie's name was previously misspelled as "Magee" in Respondents' May 22, 2009 Response to Motion, ¶10a, p. 3.

Respondents' loan repayment history and present status; Respondents' inability to pay the Complainant's proposed penalty and inability to remain in business upon imposition thereof.

5. Christopher Kouza. June 11, 2008 loan to Jerry Watha in the amount of \$100,000; August 22, 2008 loan of \$230,000; September 17, 2008 loan of \$100,000; additional loan of \$50,000; terms of each loan; repayment (or lack thereof) of each loan; present status of each loan; purpose of each loan.

6. Ryan A. Husaynu, 26211 Central Park Boulevard, Suite 207, Southfield, MI. Sale of Mr. Watha's interest in Huntington Property Holdings, LLC; authentication of documents regarding the same.

7. Designees/Recordkeepers (identities not yet determined) regarding the following outstanding debts to the following entities):

- a. CCO Mortgage
- b. Charter One Mortgage
- c. First Independence Bank
- d. Heritage Title
- e. LaSalle Bank
- f. Miami Valley Bank
- g. Michigan Catholic Credit Union
- h. Michigan Heritage Bank
- i. MVB Mortgage
- j. Paramount Bank
- k. RBS Citizens NA
- l. Warren Bank

8. Lorraine Fitzpatrick, 3257 West Haverford, Franklin, MI 48025; \$120,000 loan to Jerry Watha on May 28, 2008; terms and present status thereof.

9. Fadia Kouza, 36700 Woodward Avenue, Suite 209, Bloomfield Hills, MI 48304. \$100,000 loan to One Management, Inc. and Jerry Watha on September 17, 2008; terms and present status of the loan.

10. Christopher Louza, 36700 Woodward Avenue, Suite 209, Bloomfield Hills, MI 48304. \$115,000 loan to Jerry Watha on June 10, 2008; terms and present status of the loan.

11. Jackie Karim, \$48,000 loan to One Management, Inc.; terms and present status of the loan.

12. Paul D. Kelley, Certified Lead Inspector/Risk Assessor, Greater Detroit Area Health Council, Lead Elimination Action Program/LEAP Detroit, 11148 Harper, Detroit, MI 48213. Lead inspection/risk assessment of the following properties in Detroit, Michigan on the dates listed below; preparation of lead inspection and risk assessment report regarding the same:

A.	19300 Omira	October 16, 2006
B.	12873 Hickory	October 18, 2006
C.	13145 Mackay	October 20, 2006
D.	19777 Heyden	October 24, 2006
E.	14500 Linnhurst	October 26, 2006
F.	14209 Greenlawn	October 27, 2006
G.	19251 Ryan	October 30, 2006
H.	14316 Jane	October 31, 2006
I.	14718 Spring Garden	November 2, 2006
J.	14508 Alma	November 6, 2006
K.	12019 Wade	November 11, 2006
L.	13409 Hampshire	November 16, 2006

It is reasonably anticipated that Mr. Kelley will describe each inspected and assessed property, will testify that the purpose of each investigation was to determine the existence of lead based paint hazards and to determine the location, type and severity of existing or potential hazards; findings of each investigation, preparation and compilation of each report; contents of each report; photographs, authentication of reports and their contents.

13. Rebecca (Becky) Williamson, Accurate Analytical Testing, LLC, 38900 Huron River Drive, Romulus, MI 48174 and 12950 Haggerty Road, Belleville, MI 48111 regarding analysis of dust and soil samples, Accurate Analytical Testing's participation in the environmental lead proficiency analytical testing quality control rounds; certificates of each analysis contained within the lead inspection and risk assessment reports "A-K" above prepared by Paul D. Kelley, *supra*.

14. Velma Lyons, Analyst, Accurate Analytical Testing, LLC, 38900 Huron River Drive, Romulus, MI 48174 and 12950 Haggerty Road, Belleville, MI 48111 regarding analysis of dust and soil samples, Accurate Analytical Testing's participation in the environmental lead proficiency analytical testing quality control rounds; certificates of each analysis contained within the lead inspection and risk assessment report (item "L" above) regarding the property located at 13409 Hampshire, Detroit, MI prepared by Paul D. Kelley, *supra*.

15. Jeffrey J. Dupler, Technical Manager, Michigan Department of Community Health; environmental lead report regarding assessment of dust and soil at the property at 19300 Omira, Detroit, MI and the property located at 12873 Hickory, Detroit, MI 48205.

16. Perry Mehta, President, Future Net Group, 12801 Auburn Street, Detroit, MI 48223; contract with One Management, Inc. to conduct a lead based paint risk assessment and prepare a report regarding the same for the following properties in the City of Detroit:

A.	17320 Goulburn	November 3, 2006
B.	5316 Rohns	November 6, 2006
C.	20525 Schoehnerr	November 7, 2006
D.	19423 Lamont	November 7, 2006
E.	10061 Nottingham	November 8, 2006

F.	77 Portage	November 9, 2006
G.	8055 East Brentwood	November 9, 2006
H.	20124 Keating	November 9, 2006
I.	20126 Keating	November 9, 2006
J.	13488 Syracuse, Apt. 2	November 10, 2006
K.	6689 Burns	November 13, 2006
L.	20139 Exeter	November 14, 2006
M.	104 Pilgrim	November 16, 2006
N.	106 Pilgrim	November 16, 2006

It is reasonably anticipated that Mr. Mehta may describe each inspected and assessed property, may testify that the purpose of each investigation was to determine the existence of lead based paint hazards and to determine the location, type and severity of existing or potential hazards; findings of each investigation, preparation and compilation of each report; contents of each report; authentication of reports and their contents.

17. Kami LaFord, Certified Lead Inspector/Risk Assessor, Michigan Certification No. P-3245, Future Net Group, 12801 Auburn Street, Detroit, MI 48223; Ms. LaFord performed the on-site field work in regard to the lead based paint risk assessments at all of the properties identified in the preceding paragraph except for the property at 77 Portage.

18. Keith Glasspoole, Jr., Lead Inspector/Risk Assessor and RA/EBL Investigator, Michigan Certification No. P-0637, Future Net Group, 12801 Auburn Street, Detroit, MI 48223. Mr. Glasspoole performed the lead based paint risk assessments for the property located at 77 Portage, Detroit, MI.

19. Levil Iroha, Michigan Department of Community Health, Environmental Lead Inspector. Mr. Iroha will testify regarding the environmental lead inspection at 338 Grove, Highland Park, MI.

20. Kendrick K. Covington, Environmental Field Manager, Multiple-Solutions Technologies Corp., 13160 West McNichols, Detroit, MI 48235, lead clearance test report regarding 338 Grove.

21. Andre Manning, One Accord Environmental Services, 26440 Southfield, MI Lathrop Village, MI regarding proposal and activities in regard to lead inspection and risk assessments for five properties in Highland Park, Michigan.

22. David Chute, Director, Antrium Environmental Health and Safety Services, LLC, 11495 Sunset Hills Road, Suite 210, Reston, VA 20190. Mr. Chute may testify regarding Mr. Jerry Watha's successful completion of a lead safety training program for remodeling, repair and painting, the contents of the lead safety training program, the certificate issued to Mr. Watha upon his successful completion of this program, and correspondence regarding that certificate.

II. EXHIBITS.³

The Respondents may introduce into evidence at the hearing in this matter one or more of the following exhibits. The dates on which the Respondents previously produced these materials are identified in the footnotes below.

1. October 4, 2006 Certificate of Completion regarding Mr. Jerry Watha's successful completion of Antrium Environmental Health and Safety Services, LLC's lead safety training program for remodeling, repair, and painting.⁴

2. Antrium Environmental Health and Safety Services, LLC's (Dan Chute) October 12, 2006 letter regarding Mr. Watha's successful completion of the lead safety for remodeling, repair and painting class.⁵

3. Promissory Note between Lorraine Fitzpatrick and One Management, Inc., in the amount of \$120,000 dated May 28, 2008.⁶

4. Promissory Note between Fadia Kouza and One Management, Inc., in the amount of \$115,000 dated June 10, 2008.⁷

5. Promissory Note between Fadia Kouza and One Management, Inc., in the amount of \$100,000 dated September 17, 2008.⁸

6. Notice of Federal Tax Lien for approximately \$95,000 as of today, dated September 7, 2007.⁹

³ Exhibit 37 is attached hereto; see also footnote 39, p. 9, *infra*. In a good faith effort to expedite the submission of this Prehearing Exchange, the Respondents are doing so while the remaining exhibits are in the process of being reproduced for their submission to the Presiding Officer, the Regional Hearing Clerk, and again to the Complainant's counsel. Also, on Tuesday, June 9, 2009, the Respondents (through Mr. Jerry Watha and legal counsel) and the Complainant (through its counsel) will have a telephone conference with Ms. Gail Coad, the Complainant's witness who has claimed that she needs to review additional items to complete her "inability to pay" analysis (Complainant's Exhibit 8, pp. 8-13). Additional Exhibits may be identified after that conference.

⁴ The Respondents previously produced a copy of Exhibits 1 and 2 to the Assistant United States Attorney previously involved in this matter on or about October 20, 2004.

⁵ *Id.*

⁶ The Respondents provided copies of Exhibits 3-13 to the Complainant's counsel on or about December 8, 2008.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

7. Sheriff deed of mortgage foreclosure by Huntington Bank dated February 5, 2008 in the amount of \$118,000.¹⁰

8. Charter One lawsuit filed against One Management, Inc., in Wayne County Circuit Court on May 8, 2008 for approximately \$300,000.¹¹

9. CCO Mortgage lawsuit filed against Jerry Watha, Fattin Watha and One Management, Inc., in Oakland County Circuit Court for approximately \$950,000.¹²

10. Michigan Heritage Bank lawsuit filed against Jerry Watha, Fattin Watha and One Management, Inc., in Wayne County Circuit Court, February 21, 2008 for approximately \$450,000.¹³

11. Outstanding credit card bills which Mr. and Mrs. Watha have been borrowing on to keep the company alive, \$200,000.¹⁴

12. Loan from Jackie Karim to One Management, Inc., on her equity line, approximately \$48,000.¹⁵

13. Brown-Bark III, LLP/One Management mortgage materials.¹⁶

14. Summary of outstanding debts as of November 31, 2008 (to be supplemented).¹⁷

15. Ryan Husaynu December 3, 2008 letter and its enclosures.¹⁸

16. CCO Mortgage secured properties summary disposition.¹⁹

17. Paramount Bank loan statements.²⁰

18. Michigan Catholic Credit Union billing statements.²¹

19. First Independence Bank loan statements.²²

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ The Respondents provided copies of Exhibits 14-28 to the Complainant's counsel on March 10, 2009.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

20. LaSalle Bank loan statement.²³
21. Warren Bank loan statement.²⁴
22. Heritage Title promissory note/second mortgage payoff.²⁵
23. Chase credit card statements.²⁶
24. Sheriff's deed on mortgage sale regarding Huntington Bank foreclosure on 6915 Halyard, Bloomfield Hills, MI.²⁷
25. Complaint in the matter of *Charter One v One Management, Inc.*, Wayne County Circuit Court Case No. 08-112022-CK.²⁸
26. Complaint in the matter of *RBS Citizens NA v Watha*, Oakland County Circuit Court Case No. 08-091171-CK.²⁹
27. Michigan Heritage Bank notice of default and acceleration of loans.³⁰
28. Complaint, *Michigan Heritage Bank v One Management, Inc., et al*, Wayne County Circuit Court Case No. 08-104482-CZ.³¹
29. One Management, Inc.'s 2004 US income tax return.³²
30. One Management, Inc.'s 2004 State of Michigan single business tax simplified return.³³
31. One Management, Inc.'s 2005 US income tax return.³⁴
32. One Management, Inc.'s 2005 State of Michigan single business tax simplified return.³⁵
33. One Management, Inc.'s 2006 US income tax return.³⁶

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² The Respondents provided copies of Exhibits 29, 30, 31 and 32 to the Complainant's counsel on or about October 13, 2008.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

34. One Management, Inc.'s 2006 Michigan single business tax return.
35. One Management, Inc.'s 2007 US income tax return.³⁷
36. One Management, Inc.'s 2007 Michigan single business tax return.³⁸
37. Jerry and Fattin Watha's 2007 US income tax return.³⁹
38. One Management, Inc.'s 2008 US and Michigan income tax returns (upon completion; not yet completed).
39. Jerry and Fattin Watha's personal US and state of Michigan income tax returns for the years 2004, 2005, 2006 and, upon completion, 2008.
40. Compilation of lead inspection and risk assessment reports prepared by Paul D. Kelley, Greater Detroit Area Health Council, Lead Elimination Action Program/LEAP Detroit for the following properties:⁴⁰

A.	19300 Omira	October 16, 2006
B.	12873 Hickory	October 18, 2006
C.	13145 Mackay	October 20, 2006
D.	19777 Heyden	October 24, 2006
E.	14500 Linnhurst	October 26, 2006
F.	14209 Greenlawn	October 27, 2006
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H.	14316 Jane	October 31, 2006
I.	14718 Spring Garden	November 2, 2006
J.	14508 Alma	November 6, 2006
K.	12019 Wade	November 11, 2006
L.	13409 Hampshire	November 16, 2006

41. Lead based paint risk assessment reports prepared by Future Net Group for the following properties:⁴¹

A.	17320 Goulburn	November 3, 2006
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³⁶ The Respondents provided a copy of this Exhibit to Mr. Scott Cooper of the US EPA Region V on or about December 18, 2007.

³⁷ The Respondents provided copies of Exhibits 35 and 36 to the Complainant's counsel on or about August 13, 2008. The Respondents' counsel understands and believes that Exhibit 37 accompanied Exhibits 35 and 36.

³⁸ *Id.*

³⁹ *Id.*; another copy of Exhibit 37 is attached hereto.

⁴⁰ The Respondents provided copies of Exhibits 40 (A-L) - 55 to Mr. Scott Cooper of the US EPA Region 5 on or about December 18, 2007.

⁴¹ *Id.*

B.	5316 Rohns	November 6, 2006
C.	20525 Schoehnerr	November 7, 2006
D.	19423 Lamont	November 7, 2006
E.	10061 Nottingham	November 8, 2006
F.	77 Portage	November 9, 2006
G.	8055 East Brentwood	November 9, 2006
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J.	13488 Syracuse, Apt. 2	November 10, 2006
K.	6689 Burns	November 13, 2006
L.	20139 Exeter	November 14, 2006
M.	104 Pilgrim	November 16, 2006
N.	106 Pilgrim	November 16, 2006

42. Exemplar lead warning statement regarding tenant Yvonne Estell, 338 Grove, Detroit, MI and related documents (affidavit, rental agreement, rental application, lead warning statement).⁴²

43. Proposal and invoice from One Accord Environmental Services, Inc., 3691 Boulder, Troy, MI 48084 regarding lead abatement and window replacement at 338 Grove, Highland Park, MI.⁴³

44. One Management, Inc.'s checks paid to One Accord Environmental.⁴⁴

45. Michigan Department of Community Health Environmental Lead Report regarding 338 Grove, Highland Park, MI.⁴⁵

46. Kendrick K. Covington, Multiple-Solutions Technologies Corp.'s lead clearance test report regarding 338 Grove.⁴⁶

47. Compilation of 30th District Court materials in the matter of *People v Watha*, Case No. 06-02125-SM.⁴⁷

48. Children and Expectant Mother's forms in regard to occupied properties.⁴⁸

49. Future Net Group/One Management Group contract for lead hazard remediation.⁴⁹

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

- 50. Lead hazard remediation program/occupant protection plan.⁵⁰
- 51. Compilation of City of Detroit building permits.⁵¹
- 52. Compilation of invoices from Clear Corp. (LEAP Detroit) and Future Net regarding lead paint assessment and/or abatement activities.⁵²
- 53. Compilation of lead warning statements pertaining to properties purchased and/or sold.⁵³
- 54. Siding World invoices regarding lead-based paint abatement related improvements.⁵⁴
- 55. Summary of expenses for lead-based paint assessment and abatement activities, together with copies of all invoices pertaining thereto.⁵⁵

Respondents respectfully reserve the right and opportunity to timely supplement the above 30 days before the hearing date.

III. DEFENSES

The Respondents have admitted the Complainant's allegations in regard to the ownership, rental and sale of the residential properties and that each of the subject residential dwellings was constructed before 1978 (Respondents' Answer, ¶¶20-24, 27-34, 41, 46-47, 49-50 and 52). The Respondents appropriately declined to answer the Complainant's legal allegations. The Respondents also left the Complainant to its proofs in regard to the remaining allegations in the Complaint.

The Respondents' affirmative defenses are stated below:

1. The Respondents are unable to pay the \$638,508 penalty which the U.S. EPA seeks to impose in this matter.
2. Imposition of the \$638,508 penalty which the U.S. EPA seeks to impose in this matter shall result in the Respondents' inability to continue to do business.

⁵⁰ *Id.*
⁵¹ *Id.*
⁵² *Id.*
⁵³ *Id.*
⁵⁴ *Id.*
⁵⁵ *Id.*

The following comment also pertains to the inability to pay and inability to continue in business defenses.

The Environmental Protection Agency's Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act ("Guidelines") provide, among other things, that:

"Measuring a firm's ability to pay a cash penalty, without ceasing to be operable, can be extremely complex. The focus is on the solvency of the firm. Rather than performing extensive financial analysis of a firm, which would take an unreasonable effort on the part of both the Agency and the firm, it is believed that a year's net income, as determined by a fixed percentage of total sales, will generally yield an amount which the firm can afford to pay. -- Since small firms are generally less profitable than average size firms, and since small firms are the ones most likely to have difficulty paying TSCA penalties, the guidelines is reduced (from five) to four percent."

"For purposes of calculating the ability to pay, figures for the current year and the prior three years should be averaged. Four percent of the average sales will serve as the guideline for whether the company has the ability to pay."⁵⁶

The above referenced guidelines also provide that if a responding firm raises the issue of inability to pay in its answer (as did the instant Respondents):

"... the four percent guideline discussed above should be the model to follow. The firm should be asked to bring appropriate documentation to indicate what their sales have been, such as tax returns, financial statements, etc. If the proposed penalty exceeds four percent of total sales, the penalty may be reduced to an affordable level."⁵⁷

The Respondent One Management, Inc.'s 2004, 2005, 2006 and 2007 United States Income Tax Return are identified above as Exhibits 29, 31, 33 and 35, respectively. The following chart illustrates One Management, Inc.'s total gross and net incomes for each year, the average annual gross and net incomes for those four years, and the calculation of the four percent penalty thereupon in accordance with the Guidelines.⁵⁸

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⁵⁶ Complainant's Exhibit 24, 45 Federal Register 59769 at 59775.

⁵⁷ *Id.*

⁵⁸ This illustration is without prejudice to any and all of One Management, Inc.'s defenses.

Year	Total gross income (line 6)	Total net income (line 21)
2004	\$384,472	\$45,739 ⁵⁹
2005	\$558,216	\$22,152 ⁶⁰
2006	\$285,673	\$25,416 ⁶¹
2007	\$153,187	\$(63,254) ⁶²
Four year total	\$1,381,548.00	\$30,053
Four year average	\$345,387	\$7,513.25
Four percent Guideline	\$13,815.48	\$300.53

The Respondents' evidence demonstrates that it is unable to pay the Complainant's requested \$638,508 penalty. The above chart also illustrates that the Complainant's requested penalty overwhelmingly exceeds the Agency's guideline.

The Respondents' other affirmative defenses stated to date include the items described in paragraphs 3-12 below.

3. The penalties which the U.S. EPA seeks to impose in this matter are excessive and if imposed, shall result in a deprivation of the Respondents' rights as guaranteed by the Fifth and Eighth Amendments of the U.S. Constitution.

4. The imposition of the penalties sought in this matter shall result in an uncompensated taking of the Respondents' property, contrary to the Respondents' rights as guaranteed by the Fifth Amendment of the United States Constitution.

5. The Respondents have previously undertaken a substantial lead-based paint inspection and abatement project involving a number of properties and for which the Respondents have paid approximately \$370,000. The Respondents have continued to make payments upon the debt incurred to fund these lead-based paint inspection and abatement activities. The Respondents' performance of these activities substantially reduce the potential risk of exposure from any lead-based paint and should be considered as a Supplemental Environmental Project (SEP). Alternatively, even if these activities do not qualify as a SEP, the Respondents' performance of the lead-based paint inspection and abatement activities should mitigate the nature and amount of the penalties, if any, imposed upon them.

6. If and to the extent that the U.S. EPA seeks to impose penalties upon the Respondents for one or more acts outside the applicable period of limitations (including the tolling thereof from June 1, 2006 to November 30, 2006 and from December 7, 2007 to June 30, 2008), the imposition of said penalties for said acts is barred by the applicable statute of limitations.

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⁵⁹ Exhibit 29.

⁶⁰ Exhibit 31.

⁶¹ Exhibit 33.

⁶² Exhibit 35. The amount in line 21 of this tax return is loss.

7. The Respondents are entitled to a setoff against the penalty(ies) in the amounts the Respondents spent and continue to spend in regard to their lead-based paint inspection and abatement projects.

8. The Respondents are entitled to a setoff against the penalty(ies) in the amounts of lost rental revenues incurred during and as a result of the Respondents' lead-based paint inspection and abatement projects.

9. The penalties sought by the U.S. EPA are otherwise inappropriate in light of the facts and circumstances applicable to this matter.

10. The applicable principles of equity and estoppel preclude the imposition of the penalties sought in the instant action, particularly in light of the Respondents' prior performance of lead-based paint inspection and abatement activities and/or the Respondents' inability to pay the penalties and/or the Respondents' continued expenditures upon their lead-based paint inspection and abatement projects.

11. The U.S. EPA has abused its administrative authority and seeks to compel the performance of lead-based paint inspection and/or abatement activities when it has no legislative authority to do so.

12. The Respondents did not commit any knowing violation of the statutes and/or administrative rules upon which the U.S. EPA has based its complaint.

IV. LOCATION AND LENGTH OF HEARING

The Respondents request that the prehearing and hearing in this matter be held at a suitable location in or near Detroit, Michigan. The Respondents' office is located in Detroit, Michigan. Mr. and Mrs. Watha reside in the Detroit area. All of the Respondents' witnesses live and work in the Detroit area.

The Respondents anticipate needing approximately four days to present their case.

The Respondents will work cooperatively with the Complainant to make their witnesses available for the hearing. The Respondents will coordinate with the testifying witnesses regarding their availability. The Respondents anticipate that the hearing will occur in the fourth quarter of 2009 or the first quarter of 2010.

V. RESERVATION OF RIGHTS.

The Respondents respectfully reserve the right to call all witnesses called by the Complainant, to recall any of the Complainant's witnesses in rebuttal and to modify or supplement the names of witnesses and identity of their exhibits prior to the adjudicatory hearing upon adequate notice to the Complainant and the Presiding Officer.

Respectfully submitted,
FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
Attorneys for Respondents

Dated: June 5, 2009

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