

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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MAY 29 2009

In the Matter of:)
)
One Management, Inc.;)
L&J Investment, Inc.; and)
One Management Investment Group,)
Detroit, Michigan)
)
Respondents.)

REGIONAL HEARING CLERK
ENVIRONMENTAL
PROTECTION AGENCY
Docket No. TSCA-05-2008-0012
Honorable William B. Moran
Presiding Administrative Law Judge

**COMPLAINANT'S REPLY TO RESPONDENTS' RESPONSE TO COMPLAINANT'S
MOTION REGARDING RESPONDENTS' FAILURE TO COMPLY WITH THE
PREHEARING ORDER**

On May 26, 2009, Complainant received Respondents' response to Complainant's Motion Regarding Respondents' Failure to Comply with the Prehearing Order (Respondents' Response). Complainant takes no position on Respondents' belated request for an extension of time to file their Prehearing Exchange. However, Complainant does object to Respondents' observations at page 3, paragraphs 9 and 10, that Respondents have previously produced information to Complainant that identifies most of the Respondents' proposed witnesses and documents.¹

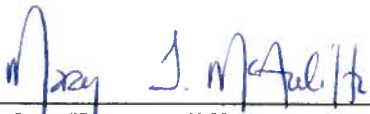
This Court's February 2, 2009 Prehearing Order (Prehearing Order) and 40 C.F.R. § 22.19 set forth the requirements for filing the Prehearing Exchange. The requirements of the

¹ In paragraph 7.b. of Respondents' Response, Respondents note their expenditures for lead-based paint abatement work. As part of the Explanation of Proposed Penalty (Complainant's Exhibit (CX) 26 of Complainant's prehearing exchange) prepared by Enforcement Officer Scott Cooper, at page 71, footnote 2, Complainant has addressed the fact that Mr. Watha's expenditures for abatement work were part of his plea agreement in resolution of Wayne County's criminal enforcement action against One Management, Inc. for alleged criminal violations of state lead

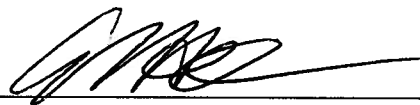
Prehearing Order and 40 C.F.R. § 22.19 include, but are not limited to, the identification of any witness that may be called at hearing, along with a brief narrative summary of their expected testimony, and copies of all documents and exhibits that Respondents intend to introduce into evidence at hearing. While Respondents have provided some documents to Complainant to support their claim of an inability to pay the penalty proposed in the Complaint², Respondents have neither stated which persons identified in those documents Respondents may call to testify nor provided a brief narrative summary of their expected testimony. Respondents have therefore not provided information that complies with the Court's Prehearing Order and 40 C.F.R. § 22.19 to Complainant. Should this Court agree to allow Respondents additional time to file their prehearing exchange, Complainant respectfully requests that this Court also order Respondents to fully comply with the Prehearing Order and 40 C.F.R. § 22.19.

Respectfully submitted,

U.S. Environmental Protection Agency



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based paint laws. CX 19 of Complainant's Prehearing Exchange consists of documents from the criminal enforcement action and plea agreement.

² As explained in greater detail in Complainant's Motion to Amend Prehearing Order filed on February 6, 2009, and in Complainant's Prehearing Exchange filed on April 3, 2009, supported by the affidavit of Ms. Gail Coad (CX 8) and the investigatory report prepared by Civil Investigator Maureen O'Neill (CX 32), to date, Respondents have failed to provide relevant and probative evidence relating to the statutory factors of ability to pay and the effect of the penalty on Respondents' ability to continue to do business.

In the Matter of One Management, Inc., L&J Investment, Inc., and One Management Investment Group, Docket No. TSCA-05-2008-0012

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CERTIFICATE OF SERVICE

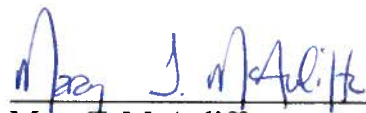
I hereby certify that on the 29th day of May, 2009, I filed the original and gave a copy of Complainant's Reply to Respondents' Response to Complainant's Motion Regarding Respondents' Failure to Comply with the Prehearing Order with the Regional Hearing Clerk, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, and placed for pickup to be mailed a copy of Complainant's Reply to Respondents' Response to Complainant's Motion Regarding Respondents' Failure to Comply with the Prehearing Order, along with a copy of such filing on a disc, by Pouch Mail to:

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

The Honorable William B. Moran
Administrative Law Judge
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

and placed for pickup to be mailed a copy of Complainant's Reply to Respondents' Response to Complainant's Motion Regarding Respondents' Failure to Comply with the Prehearing Order by certified mail, certified receipt number 7001 0320 0006 0188 4732, to:

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