

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

In the Matter of)	
)	
KASHFLO, INC.)	Docket No. TSCA-07-2010-0002
St. Louis, Missouri)	
)	
Respondent.)	RESPONDENT'S
)	MOTION TO DISMISS, - IN THE
)	ALTERNATIVE - MOTION FOR
Proceedings under Section 16(a) of the)	MORE DEFINITE STATEMENT,
Toxic Substances Control Act,)	AND ANSWER TO COMPLAINT
15 U.S.C. § 2615(a))	
)	

COMES NOW RESPONDENT KASHFLO, INC., A Missouri Corporation in Good Standing, by Its Attorney Robert C. Withington and in Response to the Complaint herein states:

MOTION TO DISMISS

Comes Now Respondent pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure and Rule 55.27(a)(6) of the Missouri Rules of Civil Procedure and Moves to Dismiss the Complaint for the Failure to State A Claim Upon Which Relief May Be Granted.

(IN THE ALTERNATIVE)

MOTION FOR MORE DEFINITE STATEMENT

Comes Now Respondent pursuant to Rule 12 (e) of the Federal Rules of Civil Procedure and Rule 55.27(d) of the Missouri Rules of Civil Procedure and Moves For a More Definite Statement as to Averments Numbered as Paragraphs 14, 15, 17, 18 and 19 as the same are so vague and ambiguous that Respondent cannot be certain if It has reasonably prepared and pleaded an accurate response herein.

SUBJECT TO THE ABOVE MOTIONS AND WITHOUT WAIVER OF SAME
RESPONDENT'S ANSWER TO COMPLAINT
REQUEST FOR HEARING AND INFORMAL CONFERENCE

Section I
Jurisdiction

1. This Complaint and Notice of Opportunity for Hearing (Complaint) serves as notice that the United States Environmental Protection Agency (EPA), Region 7 has reason to believe that Respondent has violated Section 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

ANSWER: Respondent **ADMITS** only the Jurisdiction of the Complainant; **DENIES** that Respondent violated Section 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d and all other allegations of Averment One AND under elements of Due Process and Fundamental Fairness Requests a Hearing and a prior Informal Conference after the opportunity to obtain Discovery of Complainant's alleged proof and the opportunity to respond and refute same.

2. This administrative action for the assessment of civil penalties is instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, (Consolidated Rules) a copy of which is enclosed along with this Complaint.

ANSWER TO AVERMENT TWO: Respondent **ADMITS** only the Jurisdiction of the Complainant; **DENIES** that Respondent has any liability for the assessment of civil penalties instituted pursuant to Section 16(a) of SCA, 15 U.S.C. § 2615(a), and in accordance with the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, (Consolidated Rules) or that a basis for any violation has occurred and puts Complainant to strict proof thereon and Denies all other allegations of Averment Two.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief of the Toxics and Pesticides Branch at EPA, Region 7.

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the allegations of Averment Three and accordingly **DENIES** same and puts Complainant to strict proof thereon; Respondent Further **DENIES** Averment Three to the extent it states a legal conclusion.

4. The Respondent is Kashflo, Inc., a corporation incorporated under the laws of Missouri and authorized to conduct business in the State of Missouri.

ANSWER: Respondent **ADMITS** the allegations of Averment Four.

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978.

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the allegations of Averment Five as to the Legislative and Regulatory History recited above and accordingly **DENIES** same and puts Complainant to strict proof thereon; Respondent Further **DENIES** Averment Five above to the extent it states a legal conclusion.

5. (continued) The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745, Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead based paint and/or lead-based paint hazards in the target housing ;b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment for inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the above allegations of Averment Five as to the Legislative and Regulatory History recited above and accordingly DENIES as to the legal conclusions averred therein; Further Respondent DENIES it violated said Act, Regulations and in particular 40 C.F.R. Part 745, Subpart F or Section 1018 of the "Act" or Section 409 of TSCA or any sub parts or parts thereof or any other such Act, Regulation or Rule aforesaid and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Five above to the extent it states a legal conclusion.

Section IV

General Factual Allegations

6. Respondent is, and at all times referred to herein was, a "person" within the meaning of TSCA.

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the Legal Conclusion of Averment Six and accordingly DENIES same and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Six above to the extent it states a legal conclusion; By Way of Further Answer, Respondent states that It is a Missouri General Business Domestic Corporation in Good Standing and bearing Charter Number 00410544 with the Office of the Missouri Secretary of State.

7. Respondent is, and at all times referred to herein was, a "lessor" as that term is defined by 40 C.F.R. § 745.103, for the lease of Apartment 2W, 5565 Chamberlain and 5575 Chamberlain, St. Louis, Missouri (the Properties).

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the Legal Conclusion of Averment Seven and accordingly DENIES same and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Seven to the extent it states a legal conclusion; Subject to Its Motion to Dismiss Above and without waiver of same, Respondent herein Moves for a More Definite Statement as to the words "the lease" and is without sufficient factual information to Admit or Deny the Legal Conclusion of Averment Seven as to "the lease" and accordingly DENIES same and puts Complainant to strict proof thereon; By Way of Further Answer, Respondent ADMITS only that It is the Owner of 5565 Chamberlain and 5575 Chamberlain, St. Louis, Missouri as a matter of public record, (the Properties).

8. The Properties were constructed before 1978.

ANSWER: To the best of its knowledge, information and belief, Respondent ADMITS the allegations of Averment Eight.

9. The Properties are target housing as defined by 40 C.F.R. § 745.103.1

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the Legal Conclusion of Averment Six and accordingly DENIES same and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Six above to the extent it states a legal conclusion.

10. EPA has conducted an evaluation of Respondent's compliance with the lead-based paint disclosure requirements of TSCA and 40 C.F.R. Part 745, Subpart F, and has collected records and information from Respondent as part of that evaluation.

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the Legal Conclusion of Averment Ten and accordingly DENIES same; Respondent Further DENIES Averment Ten above to the extent it states a legal conclusion. By way of Further Answer, Respondent ADMITS It informally provided some documents to Complainant, but DENIES that It has violated the lead-based paint disclosure requirements of TSCA and 40 C.F.R. Part 745, Subpart F and puts Complainant to strict proof thereon.

Violations

11. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated there under, as follows:

ANSWER: Respondent Denies that Respondent violated Section 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property, promulgated pursuant to Section 1018 of the Residential Lead - Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d and all other allegations of Averment Eleven, puts Complainant to strict proof thereon AND under elements of Due Process and Fundamental Fairness Requests a Hearing and a prior Informal Conference after the opportunity to obtain Discovery of Complainant's alleged proof and the opportunity to respond and refute same.

Count 1

12. The facts stated in Paragraphs 6 through 10 are re alleged and incorporated as if fully stated herein.

ANSWER: Respondent incorporates by reference as Answer to this Averment Twelve all of its Answers to Averments Six through Ten (Paragraphs 6 through 10) as though re-alleged and incorporated as if fully stated herein.

13. Respondent entered into a contract to lease the target housing located at Apartment 2W, 5565 Chamberlain, St. Louis, Missouri, on or about June 8, 2006.

ANSWER: Respondent is without sufficient legal information to Admit or Deny the Legal Conclusion of Averment Thirteen and accordingly DENIES same; Respondent Further DENIES Averment Thirteen to the extent it states a legal conclusion. By way of Further Answer, Respondent ADMITS it has from time to time rented Apartment 2W, 5565 Chamberlain, St. Louis, Missouri but specifically DENIES renting same on or about June 8, 2006 and DENIES that it failed to provide lead-based paint disclosure requirements under TSCA and 40 C.F.R. Part 745, Subpart F prior to any lessee becoming obligated under the terms of any lease offer or contract which was accepted by Respondent and puts Complainant to strict proof thereon.

14. Respondent failed to provide the lessee of Apartment 2W, 5565 Chamberlain, St. Louis, Missouri, with an EPA-approved lead hazard information pamphlet before lessee was obligated under a contract to lease the target housing unit.

ANSWER: Respondent, subject to Its Motion to Dismiss above, and without waiver of same, herein Moves for a More Definite Statement as to Averment Fourteen which does not contain any specific information as to the identity of the alleged lessee or the time frame before the alleged lessee allegedly became obligated under a Respondent accepted contract to lease Apartment 2W, 5565 Chamberlain, St. Louis, Missouri;

Subject to all of same and without waiver, Respondent is without sufficient factual information to Admit or Deny the Factual Conclusion of Averment Fourteen and accordingly DENIES same; Respondent Further DENIES Averment Fourteen to the extent it states a factual or legal conclusion. By way of Further Answer, Respondent ADMITS It has from time to time rented Apartment 2W, 5565 Chamberlain, St. Louis, Missouri but specifically DENIES It failed to provide lead-based paint disclosure requirements under TSCA and 40 C.F.R. Part 745, Subpart F prior to any lessee becoming obligated under the terms of any lease offer or contract which was accepted by Respondent and puts Complainant to strict proof thereon.

15. Respondent's failure to provide the act as indicated in Paragraph 14 is a violation of 40 C.F.R. § 745.107(a)(1), and in accordance with 40C.F.R. § 745.118(e), a violation of Section 1018 of the Act and Section 409 of TSCA.

ANSWER: Respondent, subject to Its Motion to Dismiss above, and without waiver of same, herein Moves for a More Definite Statement as to Averment Fifteen and to the extent necessary Averment Fourteen which do not contain any specific information as to the identity of the alleged lessee or the time frame before the alleged lessee allegedly became obligated under a Respondent accepted contract to lease Apartment 2W, 5565 Chamberlain, St. Louis, Missouri;

Subject to all of same and without waiver, Respondent is without sufficient factual information to Admit or Deny the Legal and Factual Conclusion of Averment Fifteen and accordingly DENIES same; Respondent Further DENIES Averment Fifteen to the extent it states a factual or legal conclusion. By way of Further Answer, Respondent ADMITS It has from time to time rented Apartment 2W, 5565 Chamberlain, St. Louis, Missouri but specifically DENIES It failed to provide lead-based paint disclosure requirements under TSCA and 40 C.F.R. Part 745, Subpart F or 40 C.F.R. § 745.107(a)(1), 40C.F.R. § 745.118(e) or Section 1018 of the Act and Section 409 of TSCA prior to any lessee becoming obligated under the terms of any lease offer or contract which was accepted by Respondent and puts Complainant to strict proof thereon.

Count 2

16. The facts stated in Paragraphs 6 through 10 are re alleged and incorporated as if fully stated herein.

ANSWER: Respondent incorporates by reference as Answer to this Averment Sixteen all of Its Answers to Averments Six through Ten (Paragraphs 6 through 10) as though re-alleged and incorporated as if fully stated herein.

17. Respondent entered into a contract to lease the target housing located at 5575 Chamberlain, St. Louis, Missouri, on or about December 21, 2008.

ANSWER: Respondent, subject to Its Motion to Dismiss above, and without waiver of same, herein Moves for a More Definite Statement as to Averment Seventeen which does not contain any specific information as to the identity of any alleged lessee as 5575 Chamberlain, St. Louis, Missouri is a Twelve (12) unit apartment building and no Apartment or Unit is identified in Averment Seventeen as to the time frame before any alleged lessee allegedly became obligated under a Respondent accepted contract to lease any Apartment at 5575 Chamberlain, St. Louis, Missouri;

Subject to all of same and without waiver, Respondent is without sufficient factual information to Admit or Deny the Legal and Factual Conclusion of Averment Seventeen and accordingly DENIES same; Respondent Further DENIES Averment Seventeen to the extent it states a factual or legal conclusion. By way of Further Answer, Respondent ADMITS It has from time to time rented Apartments at 5575 Chamberlain, St. Louis, Missouri but specifically DENIES It failed to provide lead-based paint disclosure requirements under TSCA and 40 C.F.R. Part 745, Subpart F prior to any lessee becoming obligated under the terms of any lease offer or contract which was accepted by Respondent and puts Complainant to strict proof thereon.

18. Respondent failed to provide the lessee of 5575 Chamberlain, St. Louis, Missouri, with an EPA-approved lead hazard information pamphlet before lessee was obligated under a contract to lease the target housing unit.

ANSWER: Respondent, subject to its Motion to Dismiss above, and without waiver of same, herein Moves for a More Definite Statement as to Averment Eighteen which does not contain any specific information as to the identity of the alleged lessee or the time frame before the alleged lessee allegedly became obligated under a Respondent accepted contract to lease any Apartment at 5575 Chamberlain, St. Louis, Missouri;

Subject to all of same and without waiver, Respondent is without sufficient factual information to Admit or Deny the Factual Conclusion of Averment Eighteen and accordingly DENIES same; Respondent Further DENIES Averment Eighteen to the extent it states a factual or legal conclusion. By way of Further Answer, Respondent ADMITS It has from time to time rented Apartments at 5575 Chamberlain, St. Louis, Missouri but specifically DENIES It failed to provide lead-based paint disclosure requirements under TSCA and 40 C.F.R. Part 745, Subpart F prior to any lessee becoming obligated under the terms of any lease offer or contract which was accepted by Respondent and puts Complainant to strict proof thereon.

19. Respondent's failure to provide the act as indicated in Paragraph 18 is a violation of 40 C.F.R. § 745.107(a)(1), and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act and Section 409 of TSCA.

ANSWER: Respondent, subject to its Motion to Dismiss above, and without waiver of same, herein Moves for a More Definite Statement as to Averment Nineteen which does not contain any specific information as to the identity of the alleged lessee and which does not contain any specific information as to the identity of any alleged Apartment or Unit at 5575 Chamberlain, St. Louis, Missouri is a Twelve (12) unit apartment building. No Apartment or Unit is identified in Averment Nineteen as to the time frame before any alleged lessee allegedly became obligated under a Respondent accepted contract to lease any Apartment at 5575 Chamberlain, St. Louis, Missouri;

Subject to all of same and without waiver, Respondent is without sufficient factual information to Admit or Deny the Legal and Factual Conclusion of Averment Fifteen and accordingly DENIES same; Respondent Further DENIES Averment Fifteen to the extent it states a factual or legal conclusion. By way of Further Answer, Respondent ADMITS It has from time to time rented Apartment 2W, 5565 Chamberlain, St. Louis, Missouri but specifically DENIES It failed to provide lead-based paint disclosure requirements under TSCA and 40 C.F.R. Part

ANSWER TO AVERMENT 19 (continued)

745, Subpart F or 40 C.F.R. § 745.107(a)(1), 40C.F.R. § 745.118(e) or Section 1018 of the Act and Section 409 of TSCA prior to any lessee becoming obligated under the terms of any lease offer or contract which was accepted by Respondent and puts Complainant to strict proof thereon.

Section V

Relief Sought

20. Section 16(a)(1) of TSCA, 15US.C. § 2615(a)(1), provides that any person who violates Section 409 of TSCA, 15 US.C. § 2689, shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. This maximum penalty amount is limited by Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 US.C. § 4852d(b)(5), which limits penalties assessed for violations of Section 409 of TSCA to not more than \$10,000 per violation. The Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorizes penalties of up to \$11,000 for violations that occur after July 28, 1997 through January 12, 2009. For violations that occur after January 12, 2009, penalties of up to \$16,000 per violation are authorized.

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the above allegations of Averment Twenty as to the Legislative and Regulatory Effect recited above and accordingly DENIES Averment Twenty in full as to the legal conclusions averred therein; Further Respondent DENIES it violated any Act, Regulations and in particular 40 C.F.R. Part 745, Subpart F or Section 1018 of the "Act" or Section 409 of TSCA or any sub parts or parts thereof or any other such Act, Regulation or Rule aforesaid including without limitation Section 16(a)(1) of TSCA, 15US.C. § 2615(a)(1), Section 409 of TSCA, 15 US.C. § 2689 or that Respondent is liable under Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 US.C. § 4852d(b)(5) or the Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Twenty above to the extent it states a legal conclusion.

21. The proposed penalty of \$18,740 is based upon the facts alleged in this Complaint and upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), including the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent: a) Respondent's ability to pay, b) the effect on Respondent's ability to continue to do business, c) any history of prior violations, d) the degree of culpability, and e) such other matters as justice may require. The proposed penalty is in accordance with EPA's Section 1018 - Disclosure Rule enforcement Response Policy, dated February 2000, a copy of which is enclosed along with this Complaint.

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the above allegations of Averment Twenty-One as to any potential Admission of liability therein and accordingly DENIES Averment Twenty-One in full as to the factual and legal conclusions averred therein; Further Respondent DENIES it violated any Act, Regulations and in particular 40 C.F.R. Part 745, Subpart F or Section 1018 of the "Act" or Section 409 of TSCA or any sub parts or parts thereof or any other such Act, Regulation or Rule aforesaid including without limitation Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), Section 409 of TSCA, 15 U.S.C. § 2689 or that Respondent is liable under Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5) or the Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Twenty-One above to the extent it states factual or legal conclusions.

22. The proposed penalty is based on the best information available to EPA at the time the Complaint is issued. The penalty may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty. An explanation of the proposed penalty is contained in the Civil Penalty Assessment Worksheet attached and incorporated herein by reference.

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the above allegations of Averment Twenty-Two as to any potential Admission of liability therein and accordingly DENIES Averment Twenty-Two in full as to the factual and legal conclusions averred therein; Further Respondent DENIES it violated any Act, Regulations and in particular 40 C.F.R. Part 745, Subpart F or Section 1018 of the "Act" or Section 409 of TSCA or any sub parts or parts thereof or any other such Act, Regulation or Rule aforesaid including without limitation Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), Section 409 of TSCA, 15 U.S.C. § 2689 or that Respondent is liable under Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §

ANSWER TO AVERMENT 22 (continued)

4852d(b)(5) or the Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Twenty-Two above to the extent it states factual or legal conclusions.

Payment of Proposed Penalty in Full

23. A Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk. Payment of the total penalty, \$18,740 may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the above allegations of Averment Twenty-Three as to any potential Admission of liability therein and accordingly DENIES Averment Twenty-Three in full as to the factual and legal conclusions averred therein; Further Respondent DENIES it violated any Act, Regulations and in particular 40 C.F.R. Part 745, Subpart F or Section 1018 of the "Act" or Section 409 of TSCA or any sub parts or parts thereof or any other such Act, Regulation or Rule aforesaid including without limitation Section 16(a)(1) of TSCA, 15US.C. § 2615(a)(1), Section 409 of TSCA, 15 US.C. § 2689 or that Respondent is liable under Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 US.C. § 4852d(b)(5) or the Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Twenty-Three above to the extent it states factual or legal conclusions.

24. A copy of the check must simultaneously be sent to the following:

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the above allegations of Averment Twenty-Four as to any potential Admission of liability therein and accordingly DENIES Averment Twenty-Four in full as to the factual and legal conclusions averred therein; Further Respondent DENIES it violated any Act, Regulations and in particular 40 C.F.R. Part 745, Subpart F or Section 1018 of the "Act" or Section 409 of TSCA or any sub parts or parts thereof or any other such Act, Regulation or Rule aforesaid including without limitation Section 16(a)(1) of TSCA, 15US.C. § 2615(a)(1), Section 409 of TSCA, 15 US.C. § 2689 or that Respondent is liable under Section 1018(b)(5)

ANSWER TO AVERMENT 24 (continued)

of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5) or the Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Twenty-Four above to the extent it states factual or legal conclusions.

25. Checks should reference the name and docket number of this Complaint.

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the above allegations of Averment Twenty-Five as to potential Admission of liability and accordingly DENIES Averment Twenty-Five in full as to any factual and legal conclusions averred therein; Further Respondent DENIES it violated any Act, Regulations and in particular 40 C.F.R. Part 745, Subpart F or Section 1018 of the "Act" or Section 409 of TSCA or any sub parts or parts thereof or any other such Act, Regulation or Rule aforesaid including without limitation Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), Section 409 of TSCA, 15 U.S.C. § 2689 or that Respondent is liable under Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5) or the Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Twenty-Five above to the extent it states factual or legal conclusions.

26. A Respondent who wishes to resolve a proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint may do so within thirty (30) days of receipt of the Complaint, in accordance with the procedures set forth above. A Respondent who wishes to resolve a proceeding by paying the proposed penalty in full instead of filing an answer but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, in accordance with Rule 22.18(a)(1) of the Consolidated Rules. The written statement shall state that Respondent agrees to pay the proposed penalty in full within sixty (60) days of receipt of the Complaint. The written statement need not contain any response to, or admission of, the allegations in the Complaint. A Respondent must then pay the full amount of the proposed penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject a Respondent to default, as set forth below.

ANSWER TO AVERMENT 26

ANSWER: Respondent is without sufficient factual or legal information to Admit or Deny the above allegations of Averment Twenty Six as to the Legislative and Regulatory Effect recited above and accordingly DENIES Averment Twenty-Six in full as to the factual and legal conclusions averred therein; Further Respondent DENIES it violated any Act, Regulations and in particular 40 C.F.R. Part 745, Subpart F or Section 1018 of the "Act" or Section 409 of TSCA or any sub parts or parts thereof or any other such Act, Regulation or Rule aforesaid including without limitation Section 16(a)(1) of TSCA, 15US.C.§ 2615(a)(1), Section 409 of TSCA, 15 US.C.§ 2689 or that Respondent is liable under Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 US.C.§ 4852d(b)(5) or the Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and puts Complainant to strict proof thereon; Respondent Further DENIES Averment Twenty-Six above to the extent it states factual or legal conclusions.

Section VI

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Request for Hearing

27. A Respondent must file a written answer within thirty (30) days of receipt of this Complaint if Respondent: a) contests any material fact upon which this Complaint is based; b) contends that the penalty proposed in this Complaint is inappropriate; or c) contends that it is entitled to judgment as a matter of law. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which a Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation, the answer shall so state. Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes an admission of the allegation. The answer shall also state :a) the circumstances or arguments which are alleged to constitute the grounds of any defense; b) the facts that a Respondent disputes; c) the basis for opposing the proposed penalty; and d) whether a hearing is requested.

ANSWER: Respondent herein Timely Files as of February 26, 2010 Its Motion to Dismiss, Motion for More Definite Statement and subject to same and without waiver, Its Answer to the Complaint which is dated January 21, 2010, all pursuant to 40 CFR Ch. I (7-1-01 Edition) PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND REVOCATION/ TERMINATION OR SUSPENSION, Subpart (c): "Service by mail or commercial delivery service. Service of the complaint is

ANSWER TO AVERMENT 27, (continued)

complete when the return receipt is signed. Service of all other documents is complete upon mailing or when placed in the custody of a reliable commercial delivery service. Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document." The return receipt was signed on January 25, 2010.

28. The original and one copy of the answer shall be filed with the following, in accordance with Section 22.15 of the Consolidated Rules:

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 7

901 N. 5th Street Kansas City, Kansas 66101

A copy of the answer shall be sent to:

Robert W. Richards, Attorney Office of Regional Counsel

U.S. Environmental Protection Agency, Region 7

901 N. 5th Street

Kansas City, Kansas 66101.

ANSWER: Respondent herein Timely Files as of February 26, 2010 Its Motion to Dismiss, Motion for More Definite Statement and, subject to same and without waiver, Its Answer to the Complaint which is dated January 21, 2010, all pursuant to 40 CFR Ch. I (7-1-01 Edition) PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND REVOCATION/ TERMINATION OR SUSPENSION, Subparts (b) and (c).

Default

29. If, within thirty (30) days of receipt of a Complaint, a Respondent fails to: a) submit full payment of the proposed penalty; b) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint; or c) file a written answer to the Complaint; a Respondent may be found in default. Default by a Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of a Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall

29. (continued) be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or TSCA.

ANSWER: Respondent herein Timely Files as of February 26, 2010 Its Motion to Dismiss, Motion for More Definite Statement and, subject to same and without waiver, Its Answer to the Complaint which is dated January 21, 2010, all pursuant to 40 CFR Ch. I (7-1-01 Edition) PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND REVOCATION/ TERMINATION OR SUSPENSION, Subparts (b) and (c).

Section VII

Settlement Conference

30. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of TSCA and the regulations upon which this action is based. Regardless of whether a Respondent requests a hearing, a Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request an informal settlement conference, please contact:

Robert W. Richards, Attorney, Office of Regional Counsel

U.S. Environmental Protection Agency, Region 7

901 N. 5th Street Kansas City, Kansas 66101 Telephone (913) 551-7502

ANSWER: Respondent respectfully requests such an Informal Conference to be held at a mutually agreeable time for all Parties.

31. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22. 18(b)(2) of the Consolidated Rules. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.

ANSWER: Respondent respectfully requests such an Informal Conference to be held at a mutually agreeable time for all Parties.

32. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer must be filed.

ANSWER: Respondent herein Timely Files as of February 26, 2010 Its Motion to Dismiss, Motion for More Definite Statement and, subject to same and without waiver, Its Answer to the Complaint which is dated January 21, 2010, all pursuant

IN THE MATTER OF Kashflo, Inc.
Docket Number TSCA-07-20 10-0002

to 40 CFR Ch. I (7-1-01 Edition) PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND REVOCATION/ TERMINATION OR SUSPENSION, Subparts (b) and (c).

PRAYER

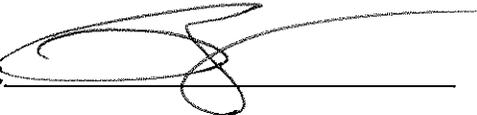
WHEREFORE, Pursuant to Its Motion to Dismiss, Respondent Prays the Complaint be Dismissed and Held for Naught; In the alternative pursuant to Its Motion for More Definite Statement, Respondent Prays the Complaint be Restated in greater particularity, especially as to Averments 14, 15, 17, 18 and 19 and that Respondent be given sufficient time, not less than provided for by Rule or 20 days, whichever is greater in which to Respond, Motion, Plead and Answer; In the alternative, pursuant to Its Answer, Respondent Prays the Complaint be Dismissed and Held for Naught and that Respondent go hence with Its costs and such other and further Relief as deemed Just and Proper.

RESPECTFULLY SUBMITTED,

KASHFLO, INC.

A MISSOURI CORPORATION

BY:



ROBERT C. WITHINGTON M.B.E. 31619

E.D.MO 9903

7116 Oakland Ave

Richmond Heights, MO 63117

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(314) 725-9157 facsimile

rcw@sllaw.com

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