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U.S. DISTRICT COURT
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1 Jeffrey W. Allen, Esq. (SBN 99240)
2 VAN DE POEL, LEVY & ALLEN, LLP
3 1600 South Main Plaza, Suite 325
4 Walnut Creek, California 94596
5 Telephone: (925) 934-6102
6 Facsimile: (925) 934-6060

7 Counsel for Respondent
8 Jose P. Jazmin and Betty Jazmin,
9 Trustees of the JAZMIN FAMILY TRUST

10 IN THE MATTER OF

11 Jose P. Jazmin and Betty Jazmin, Trustees
12 of the JAZMIN FAMILY TRUST

13 Kailua-Kona, HI

14 Proceedings under Section 1423(c)
15 of the Safe Water Drinking Act,
16 42 U.S.C. § 300h-2(c)

DOCKET NO.: UIC-09-2010-0006

**ANSWER OF JAZMIN FAMILY
TRUST TO EPA COMPLAINT AND
PROPOSED ADMINISTRATIVE
ORDER WITH ADMINISTRATIVE
CIVIL PENALTY**

Complaint Filed: September 13, 2010

17 Respondents Jose P. Jazmin and Betty Jazmin, Trustees of the JAZMIN FAMILY TRUST
18 (hereinafter "Respondent"), through their attorney Van De Poel, Levy & Allen, LLP, for no others,
19 hereby answer the Complaint and Proposed Administrative Order with Administrative Penalty filed
20 by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (hereinafter "EPA") as
21 follows:

GENERAL DENIAL

22 Pursuant to the provisions of 40 C.F.R. § 22.15, this answering Respondent denies generally
23 and specifically each and every allegation contained in each cause of action of the Complaint.

AFFIRMATIVE DEFENSES

24 The following affirmative defenses are alleged on information and belief by Respondent as to
25 EPA so as not to be waived at trial. Respondent reserves the right to amend or withdraw any or all
26 defenses or to raise additional defenses as or after they may become known during the course of
27 further investigation and discovery.
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FIRST AFFIRMATIVE DEFENSE
(Incorporation of Defenses)

1. As a first affirmative defense to each cause of action of the Complaint, Respondent incorporates by this reference each and every affirmative defense set forth in its answer to EPA's Complaint as if the same were set forth seriatim.

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SECOND AFFIRMATIVE DEFENSE
(Failure to State Cause of Action)

2. As a second affirmative defense to each cause of action of the Complaint, Respondent alleges the Complaint does not state facts sufficient to constitute a cause of action against the Respondent.

THIRD AFFIRMATIVE DEFENSE
(Incapacity)

3. As a third affirmative defense to each cause of action of the Complaint, Respondent contends the allegations made in the Complaint were caused, in whole, in part, or exacerbated by Respondent's incapacity due to a debilitating care wreck on August 28, 2004, the time for which this Respondent is not liable or legally responsible. Respondent suffered a significant head injury that caused his incapacity from August 28, 2004 until he resumed management of his affairs in August 2008.

FOURTH AFFIRMATIVE DEFENSE
(Fraud/Concealment/Negligence of Others)

4. As a fourth affirmative defense to each cause of action of the Complaint, Respondent contends the allegations made in the Complaint were caused, in whole, in part, or exacerbated by the fraud/concealment/gross negligence of former real estate agent and acting manager of the subject property, namely Don Rullo/Red Time Realty/Woodbury Home Inspection Service Inc., for which Respondent is not liable or legally responsible. Don Rullo/Red Time Realty sold Respondent the subject property and ineffectively managed it until Respondent regained capacity to manage his affairs in August 2008. Woodbury Home Inspection Service Inc. inspected the property in March 2004 before Respondent purchased the property and did not report the cesspool issue, for which

1 Respondent did not receive adequate notice. Additionally, in purchasing the subject property,
2 Respondent relied on representations from the County of Hawaii that sewer connections would be
3 available to the Lona-Kona subdivision in 2005, which has not occurred to date.

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5 **FIFTH AFFIRMATIVE DEFENSE**
6 **(Laches)**

7 5. As a fifth affirmative defense to each cause of action of the Complaint, Respondent
8 contends the allegations made in the Complaint were caused, in whole, in part, or exacerbated by the
9 EPA, its agents, employees, servants and representatives pursuant to the doctrine of laches, and EPA
10 should be barred from demanding that portion of the penalty directly attributable to its proportionate
11 share of the negligence or fault in failing to timely prosecute any alleged claims as against this
12 Respondent. *In re: Iowa Turkey Growers Cooperative*, EPA Docket No. CWA-07-2001-0052 at 3
13 (2002); *Martin v. Consultants & Administrators, Inc.*, 966 F.2d 1078, 1091 (7th Cir. 1992). EPA
14 Region IX notified Don Rullo/Red Time Realty of the LCC closure requirements by letter on October
15 6, 2004, and did not pursue said requirements under its purview until May 27, 2009, the time between
16 which has detrimentally affected Respondent's potential liability.

17 **SIXTH AFFIRMATIVE DEFENSE**
18 **(Estoppel)**

19 6. As a sixth affirmative defense to each cause of action of the Complaint, Respondent
20 contends the allegations made in the Complaint were caused, in whole, in part, or exacerbated by the
21 EPA, its agents, employees, servants and representatives pursuant to the doctrine of estoppel, and
22 EPA should be barred from demanding that portion of the penalty directly attributable to its
23 proportionate share of the negligence or fault. *In re: Borden Chemicals & Plastics Co.*, EPA Docket
24 No. EPCRA-003-1992 at 17 (1993). The EPA's negligent pursuit of LCC closure five years after the
25 federal mandate has detrimentally affected Respondent's potential liability.

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SEVENTH AFFIRMATIVE DEFENSE
(Discrimination/Violation of Public Policy)

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2 7. As a seventh affirmative defense to each cause of action of the Complaint, Respondent
3 contends the allegations made in the Complaint are discriminatory in application against this
4 Respondent and violate public policy. EPA should be barred from demanding egregious penalties
5 against this Respondent as an individual residential property owner as opposed to others in alleged
6 non-compliance. Respondent appears to be the only individual residential property owner against
7 whom EPA has pursued LCC closure penalties despite the rampant use of LCCs throughout Hawaii
8 and the corresponding localities. Respondent is of Filipino descent and the subject property is
9 located in a low-income residential neighborhood that has little or no access or funding for LCC
10 closure or penalties, and the property value is such that it will not support a mortgage loan to comply
11 with EPA's demand. Such pursuit Respondent alone amongst a host of others in non-compliance
12 continually relying on governmental assurances is contrary to the stated intent of the UIC program.
13 42 U.S.C. 144.1(d)(2) (2000).

14
15 WHEREFORE, pursuant to 40 C.F.R. § 22.15(c), Respondent requests a reasonable opportunity to be
16 heard and present evidence and conduct discovery and prays for a judgment as follows:

- 17 1. That EPA take nothing by reason of their Complaint on file herein;
18 2. That Respondent be awarded attorney's fees and costs included herein; and
19 3. For such other and further relief as the Court deems proper.

20 DATED: October 13, 2010

VAN DE POEL, LEVY & ALLEN, LLP



JEFFREY W. ALLEN

Attorney for Respondents
Jose P. Jazmin and Betty Jazmin,
Trustees of the JAZMIN FAMILY TRUST

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to the above-entitled action, and am an employee of Van De Poel, Levy & Allen, LLP whose business address is 1600 South Main Plaza, Suite 325, Walnut Creek, CA 94596.

On October 13, 2010, I served the following document(s) in the following manner(s):

ANSWER OF JAZMIN FAMILY TRUST TO EPA COMPLAINT AND PROPOSED ADMINISTRATIVE ORDER WITH ADMINISTRATIVE CIVIL PENALTY

- CERTIFIED MAIL with RETURN RECEIPT REQUESTED:** By placing the document(s) listed above in a sealed envelope with postage thereon, in the United States mail at Walnut Creek, California, addressed as set forth below.
- FACSIMILE:** By transmitted a true copy, via facsimile electronic equipment transmission (fax) to the office(s) of the addressee(s) at the fax number(s) below. The number of pages transmitted (including the Proof of Service Form) was .
- PERSONAL DELIVERY:** By personally delivering to and leaving a true copy thereof with the following person(s) at the following address(es) on the date set forth above.
- PERSONAL DELIVERY BY MESSENGER:** By consigning the document(s) listed above to a messenger service for personal delivery to the following person(s) at the following address on the date set forth below.
- OVERNIGHT:** By placing a copy thereof into envelope(s) bearing the name(s) and address(es) and county(ies) of the person(s) to be served by commercial carrier service for overnight delivery as shown below.

Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Receipt No. 7007 2560 0001 7707 4142

Erica Maharg
Brett Moffatt
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Receipt No. 7007 2560 0001 7707 4159

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: October 13, 2010



Ramonda Clarke

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14 Proceedings under Section 1423(c))
15 of the Safe Water Drinking Act,)
16 42 U.S.C. § 300h-2(c))

DOCKET NO.: UIC-09-2010-0006

REQUEST OF JAZMIN FAMILY TRUST FOR INFORMAL SETTLEMENT CONFERENCE

Complaint Filed: September 13, 2010

17 Pursuant to 40 C.F.R. § 22.18(b) and in conjunction with the Answer of Jazmin Family Trust
18 to EPA Complaint and Proposed Administrative Order with Administrative Civil Penalty,
19 Respondents Jose P. Jazmin and Betty Jazmin, Trustees of the JAZMIN FAMILY TRUST
20 (“JAZMIN” or “Respondent”), respectfully request an Informal Settlement Conference with EPA for
21 a time not later than November 15, 2010.

22 DATED: October 13, 2010

VAN DE POEL, LEVY & ALLEN, LLP

23
24 JEFFREY W. ALLEN
25 Attorney for Respondents
26 Jose P. Jazmin and Betty Jazmin,
27 Trustees of the JAZMIN FAMILY TRUST
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15 of the Safe Water Drinking Act,)
16 42 U.S.C. § 300h-2(c))

DOCKET NO.: UIC-09-2010-0006

**REQUEST OF JAZMIN FAMILY
TRUST FOR HEARING AND
DISCOVERY**

Complaint Filed: September 13, 2010

17 Pursuant to 40 C.F.R. § 22.15(c), and in conjunction with the Answer of Jazmin Family Trust
18 to EPA Complaint and Proposed Administrative Order with Administrative Civil Penalty,
19 Respondents Jose P. Jazmin and Betty Jazmin, Trustees of the JAZMIN FAMILY TRUST
20 ("JAZMIN" or "Respondent"), respectfully request a reasonable opportunity to be heard and to
21 present evidence and conduct discovery by the Presiding Officer following pursuant to Subpart I of
22 the Consolidated Rules of Practice, 40 C.F.R. Part 22.

23 DATED: October 13, 2010

VAN DE POEL, LEVY & ALLEN, LLP

24
25 JEFFREY W. ALLEN
26 Attorney for Respondents
27 Jose P. Jazmin and Betty Jazmin,
28 Trustees of the JAZMIN FAMILY TRUST

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