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May 22, 2009

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

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

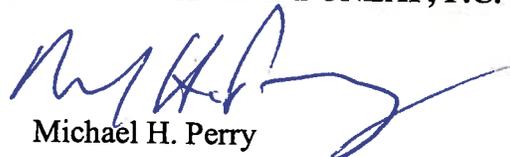
Dear Clerk:

Enclosed herewith please find the original and one copy of its Respondent's Response to Motion and Affidavit of Counsel. Also enclosed is Proof of Service of same.

Thank you.

Very truly yours,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.


Michael H. Perry

MHP:js
Enclosure

cc: Honorable William B. Moran (w/enc.)
Mary McAuliffe (w/enc.)
Erik H. Olson (w/enc.)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

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

Docket No.: TSCA-05-2008-0012

Respondents.

Michael H. Perry (P22890)
Fraser Trebilcock Davis & Dunlap, P.C.
Attorneys for Respondent
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
Telephone: (517) 482-5800
Fax: (517) 482-0887

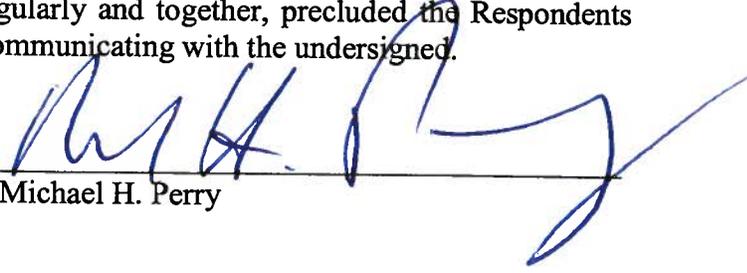
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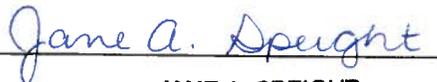
STATE OF MICHIGAN)
) ss
COUNT OF INGHAM)

Michael H. Perry, being duly sworn deposes and says as follows:

1. I am legal counsel for the Respondents in this matter.
2. I have knowledge of the matters stated in the Respondents' Response to the Complainant's Motion. The matters stated in that Response are true.
3. The Respondents' dire financial circumstances as well as a serious illness in the Watha family have, both singularly and together, precluded the Respondents from effectively and timely communicating with the undersigned.


Michael H. Perry

Subscribed and sworn to before me
this 22nd day of May, 2009



JANE A. SPEIGHT
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF CLINTON
My Commission Expires Aug. 22, 2014
Acting in the County of Ingham

FRASER
TREBILCOCK
DAVIS &
DUNLAP,
P.C.
LAWYERS
LANSING,
MICHIGAN
48933

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:

Docket No.: TSCA-05-2008-0012
Hon. William B. Moran

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

RESPONDENTS' RESPONSE TO
MOTION

Respondents.

Michael H. Perry (P22890)
Fraser Trebilcock Davis & Dunlap, P.C.
Attorneys for Respondent
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Telephone: (517) 482-5800
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NOW COME the Respondents One Management, Inc., L & J Investment, Inc., and One Management Investment Group, by and through their attorneys, Fraser Trebilcock Davis & Dunlap, P.C., and pursuant to 40 C.F.R. §22.16(b), hereby respectfully oppose the Complainant's motion regarding Respondents' failure to comply with the Prehearing Order ("Motion"):

1. The Complainant seeks a penalty of \$638,508 in this matter (Complainant's initial prehearing exchange, p. 13, §3).
2. The Respondents' principal defense in this matter is their inability to pay the penalties and fines which the Complainant seeks to obtain in its Complaint. During the pendency of this matter, the Respondents have provided the Complainant with a substantial number of documents and other information which support the Respondents' inability to pay defense.
3. The Respondents' financial condition has significantly deteriorated from the time of the filing of the Complainant's Complaint and continues to deteriorate

to the present. The Respondents are located in the City of Detroit, County of Wayne, State of Michigan. The presiding officer certainly can take judicial notice of the fact that Detroit, Michigan is a severely economically depressed community. The dire economic conditions of that community have in turn directly impacted the Respondents who have endeavored to maintain their business of providing low income housing to residents of the City of Detroit during these difficult economic times.

4. The Respondents, through their attorneys, have produced a substantial number of documents regarding the woeful state of their financial affairs, many or most of which the Complainant has relied upon in regard to the Complainant's prehearing exchange.
5. The Respondents have conferred with separate legal counsel with knowledge and experience in bankruptcy matters and have given due consideration to whether to file a petition in the United States Bankruptcy Court. Although as of the present day said petition has not been filed, the Respondent's financial difficulties have precluded the Respondents and their attorneys from participating in the prior prehearing exchange and from otherwise responding to the Complainant's Motion.
6. Pursuant to 40 C.F.R. §22.16(b), the Presiding Officer has the authority to set a longer time for a response to a motion or to make other orders concerning the disposition of motions.
7. The Respondent's lack of a timely submission of their initial prehearing exchange neither has nor shall it prejudice the Complainant because:
 - a. Many, if not most, of the Complainant's materials provided as part of its prehearing exchange either are based upon, and in many instances are duplicates of, the materials which the Respondents previously had provided to the Complainant. For example, Complainant's Exhibits 6, 7, 10, 14, 16, 17, 18, 20, 26, 35 and 36, and perhaps others, are items which the Respondents previously produced to the Complainant. Additionally, at least one of the Complainant's proposed witnesses, Ms. Gail B. Coad, has reviewed and intends to rely upon financial information which the Respondents have previously provided to the Complainant (Complainant's initial prehearing exchange, ¶5, pp. 7-8).
 - b. The Respondents previously expended hundreds of thousands of dollars in a lead-based paint abatement program in the City of Highland Park, County of Wayne, State of Michigan. All of the Respondents' information regarding its lead-based paint abatement activities were previously and timely provided to the Complainant.

- c. The Respondents, by and through their attorneys, endeavored to previously cooperate with the Complainant in good faith in response to the Complainant's subpoena and other requests for information.
8. In addition to the Respondents' financial difficulties, a member of the family of Mr. and Mrs. Watha (owners and operators of One Management, Inc.) has recently sustained a serious illness. This illness has required Mr. and Mrs. Watha to devote their attention to matters other than the instant administrative litigation.
9. 40 C.F.R. § 22.22(a) allows the parties to identify their witnesses and exhibits up to 15 days before the hearing date. No hearing date has been established in this matter. The Respondents' forthcoming initial prehearing exchange will be made well in advance of a hearing date. This disclosure shall not prejudice the Complainant, particularly in light of the fact that the Complainant has already received (and has identified as proposed exhibits and/or as the proposed basis for at least one of its witnesses' testimony) a substantial number of documents and other materials from the Respondents.
10. The materials which the Respondents have previously produced to the Complainant identify most of the Respondents' proposed witnesses. In addition to the persons whose names appear within the many documents previously produced, the Respondents may call a relatively limited number of additional witnesses, including among others:
 - a. Mr. Steven Magee, a certified public accountant who has prepared the Respondent's income tax returns.
 - b. Mr. David Bourchering of People's State Bank. Mr. Bourchering, a loan officer at People's State Bank, has knowledge regarding the dire financial circumstances of one or more of the Respondents.
 - c. The Respondents respectfully request a reasonable extension of time within which they may be allowed to identify additional witnesses, if any, upon whose testimony they may need to rely in support of their inability to pay defense.

WHEREFORE, the Respondents respectfully request the Presiding Officer to grant them the following relief:

- A. Deny the Complainant's motion.
- B. Grant to the Respondents a reasonable extension of time within which the

Respondents may make their initial prehearing exchange. In light of the circumstances of this

matter, the Respondents request that they be allowed to provide their initial prehearing exchange by June 26, 2009.

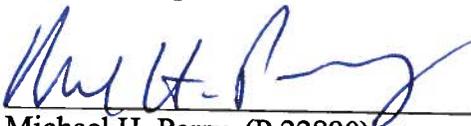
C. Schedule this matter for a prehearing conference in Detroit, Michigan within a reasonable time hereof.

D. Grant to the Respondents such other additional relief as the Presiding Officer finds just and appropriate.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
Attorneys for Respondent

Dated: May 22, 2009

By: 
Michael H. Perry (P 22890)
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Mr. Erik H. Olson (C-14J)
Associate Regional Counsel
Office of the Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

by placing the same in an envelope(s) addressed to said individual(s) at the aforesaid business address(es) and federal expressing same.



Jane A. Speight

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