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December 18, 2008

Regional Hearing Clerk (E-13J)  
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HUD Region V  
77 W Jackson Blvd Ste 2600  
Chicago IL 60604-3579

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

RE: IN THE MATTER OF DAVID COHEN AND HARRY COHEN COMPANY, INC.  
Case No. TSCA-05-2008-0021

Dear Sir or Madam:

On or about September 26, 2008 the enclosed Respondents, DAVID COHEN and HARRY COHEN COMPANY, INC.'s Answer to Complaint and proof of service was sent on behalf of the respondents to the Regional Hearing Clerk of the U.S. EPA at the above address.

Confirmation was received that it was delivered at 11:21 a.m. on September 29, 2008 and is enclosed.

A copy was sent to Margaret M. Guerriero, the Director Land and Chemicals Division and contact has been made with Mary McAuliffe in an attempt to set up an informal settlement conference.

I was just informed that the answer was not received and on file with the Regional Hearing Clerk by Ms. McAuliffe and that she was contemplating the filing of a default. I am sending another original of the Answer and Proof of Service and a copy of this letter to both Margaret M. Guerriero and Mary McAuliffe.

Very truly yours,

**SCHULMAN & ASSOCIATES, P.C.**

Sanford A. Schulman

SAS/jc

Enclosure

Cc w/enclosure: Margaret M. Guerriero  
Mary McAuliffe



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# Track & Confirm

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September 24, 2008

Regional Hearing Clerk (E-13J)  
U.S. EPA  
HUD Region V  
77 W Jackson Blvd Ste 2600  
Chicago IL 60604-3579

RE: IN THE MATTER OF DAVID COHEN AND HARRY COHEN COMPANY, INC.  
Case No. TSCA-05-2008-0021

Dear Sir or Madam:

Please find enclosed relative to the above entitled matter:

1. Respondents, DAVID COHEN and HARRY COHEN COMPANY, INC.'s Answer to Complaint filed by the United States Environmental Protection Agency and Request for Hearing;
2. Proof of Service.

Kindly file in your usual manner. Thank you for your attention to this matter.

Very truly yours,

SCHULMAN & ASSOCIATES, P.C.

Sanford A. Schulman

SAS/jc  
Enclosure

Cc w/enclosure: Margaret M. Guerriero, Director Land and Chemicals Division  
David Cohen, Harry Cohen Company, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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**In the Matter of:**

Docket No.: TSCA-05-2008-0021

**David Cohen and  
Harry Cohen Company, Inc.**

Respondents.

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**MARGARET M. GUERRIERO**  
Director, Land and Chemicals Division  
United States Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, ILL 60604-3590  
(312) 886-6237

**SANFORD A. SCHULMAN  
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**Respondents Answer and Affirmative Defenses**

NOW COMES the Respondents David Cohen and Harry Cohen Companies, Inc. (collectively "respondents"), by and through their attorneys Sanford Schulman and Bradley Hobbs respectfully submit these Answers and Affirmative Defenses to the Complaint and hereby admit, deny and allege as follows:

**Complaint**

1. *This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2615(a).*

**That in response to paragraph one of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. admit said allegation as true that the Complaint purports to be an administrative proceeding under the Toxic Substances Control Act.**

- 2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.*

**That in response to paragraph two of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. neither admit nor deny said allegation states a legal assertion or conclusions to which no responsive pleading is required.**

- 3. Respondents are David Cohen and Harry Cohen Company, Inc. with a registered office at 4105 Commerce, Commerce Twp., Michigan and a mailing address at P.O. Box 2151, Farmington Hills, Michigan.*

**That in response to paragraph three of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. admit said allegation that the Respondents are David Cohen and Harry Cohen Company, Inc.**

#### **Statutory and Regulatory Background**

- 4. In promulgating Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. §4851, Congress Found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-*

*based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements for residential rentals and sales. 42 U.S.C. §4852d (Section 1018) requires the Administrator and Secretary of the United States Department of Housing and Urban Development (HUD) to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.*

**That in response to paragraph Four of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statutes speak for themselves. As to the remainder of the assertions in paragraph 4, Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 4.**

5. *On March 6, 1996, U.S. EPA and HUD promulgated regulations codified at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon the Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. §4852d. Owners of more than four residential dwellings must comply with subpart F by September 6, 1996 pursuant to 40 C.F.R. §745.102(a).*

**That in response to paragraph Five of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statutes and regulations speak for themselves and that no further answer to paragraph 5 is required.**

6. *The Disclosure Rule implements the provisions of 42 U.S.C. §4852d which impose certain requirements on the sale or lease of target housing.*

**That in response to paragraph Six of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statute speaks for itself and that no further answer to paragraph 6 is required.**

7. *40 C.F.R. §745.103 defines target housing as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.*

**That in response to paragraph Seven of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statute speaks for itself and that no further answer to paragraph 7 is required.**

8. *40 C.F.R. §745.103 defines "lessor" as any entity that offers target housing for lease, rent or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.*

**That in response to paragraph Eight of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statute speaks for itself and that no further answer to paragraph 8 is required.**

9. *40 C.F.R. §745.103 defines "lessee" as any entity that enters into an agreement to lease, rent or sublease target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.*

**That in response to paragraph nine of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statute speaks for itself and that no further answer to paragraph 9 is required.**

*10. 40 C.F.R. §745.103 defines "agent" as any party who enters into a contract with a seller or a lessor, inclosing any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.*

**That in response to paragraph ten of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statute speaks for itself and that no further answer to paragraph 10 is required.**

*11. 40 C.F.R. §745.103 defines "seller" as any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.*

**That in response to paragraph eleven of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statute speaks for itself and that no further answer to paragraph 11 is required.**

*12. 40 C.F.R. §745.103 defines "purchaser" as any entity that enters into an agreement to purchase an interest in target housing , including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.*



**That in response to paragraph twelve of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statute speaks for itself and that no further answer to paragraph 12 is required.**

*13. 40 C.F.R. §745.100 requires, among other things, that the seller or lessor complete the disclosure activities specified in 40 C.F.R. §745.107 before a lessee is obligated under any contract to lease target housing.*

**That in response to paragraph thirteen of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statutes speak for themselves and that no further answer to paragraph 13 is required. Further, the respondents maintain that they complied with said statute and provided the necessary disclosure so as to comply with the statute.**

*14. 40 C.F.R. §745.113(b) requires that each contract to lease target housing include as an attachment or within the contract a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such record exist; a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.*

**That in response to paragraph fourteen of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statutes speak for themselves and that no further answer to paragraph 14 is required. Noting same, the respondents would affirmative assert full compliance with said statute.**

*15. Under 42 U.S.C. §4852d (b) (5) and 40 C.F.R. §745.118(e), failing to comply with the Disclosure Rule violates Section 409 of TSCA, 15 U.S.C. §2689, which may subject the violator to administrative civil penalties under Section 16 of TSCA, 15 U.S.C. §2615(a), 40 C.F.R. §745.118(f) and 42 U.S.C. §4852d (b) (5).*

**That in response to paragraph fifteen of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. state that the statutes speak for themselves and that no further answer to paragraph 15 is required.**

**General Allegations**

*16. Paragraphs 1 through 15 are realleged and incorporated here by reference.*

**Paragraph 16 contains an assertion to which no response is required.**

*17. At some time between May 1, 2000 and February 12, 2006 Respondent David Cohen owned the residential, rental building at 8070 Hildale, Detroit, Michigan (Rental Building).*

**That in response to paragraph seventeen of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. deny the assertion that at any time DAVID COHEN any any ownership interest in the real property located at 8070 Hildale, Detroit, Michigan.**

**That in response to paragraph twenty-one of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 21 and, therefore, deny the same and leave the petitioner to their proofs.**

*22. On September 18, 2002, HUD attempted to contact Attorney Schulman by phone. HUD left a message for attorney Schulman a call in return. HUD's call was never returned.*

**Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 22 and, therefore, deny the same.**

*23. In March of 2003, HUD left another phone message for Harry Cohen requesting an appointment for the inspection. This call was not returned.*

**Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 23 and, therefore, deny the same.**

*24. On July 18, 2003, Complainant issued an administrative subpoena to Harry Cohen, under authority of Section 11 of TSCA, 15 U.S.C. §2610, seeking, among other things, copies of all rental agreements and lead-based paint disclosure documentation for rental transactions at Rental Buildings owned and/or managed by Harry Cohen from May 1, 2000 to the present date.*

**That in response to paragraph twenty-four of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. admit Paragraph 24 as true.**

25. *On September 23, 2003, respondents Attorney provided Complainant with documents responsive to the TCA administrative subpoena referenced in paragraph 24, above, including information identifying Respondent David Cohen as the owner of the Rental Buildings and an affidavit signed by respondent David Cohen attesting to the truth, completeness and accuracy of the information provided.*

**That in response to paragraph twenty-five of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. deny Paragraph 24 as untrue and further state that at no time has DAVID COHEN ever represented he is or was the owner of said real property and therefore leaves the petitioner to his proofs.**

26. *On January 27, 2006, Complainant issued an administrative subpoena to Harry Cohen, under authority of Section 11 of TSCA, 15 U.S.C. §2610, seeking, among other things, copies of all sales agreements and rental agreements and lead-based paint disclosure documentation for all sales and any rental transactions not previously provided for Rental Buildings owned and/or managed by Harry Cohen from January 1, 2001 to the present date.*

**That in response to paragraph twenty-six of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. admit Paragraph 24 as true.**

27. *On March 9, 2006, Complainant mailed a certified letter to Attorney Sanford Schulman regarding Harry Cohen's failure to respond to the January 27, 2006, TSCA administrative subpoena referenced in paragraph 26, above.*

**That in response to paragraph twenty-seven of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. admit Paragraph 24 as true.**

*28. On March 10, 2006, respondents Attorney provided Complainant with documents responsive to the TCA administrative subpoena referenced in paragraph 27, above, including information identifying Respondent Harry Cohen Company, Inc. as the owner of the Rental Buildings and an affidavit signed by respondent David Cohen attesting to the truth, completeness and accuracy of the information provided.*

**That in response to paragraph twenty-eight of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. admit Paragraph 24 as true.**

*29. On August 18, 2003 Respondents entered into a written lease agreement (contract) with an individual for the lease of an apartment in a Residential Building at 8070 E. Hildale, Upper Rear, Detroit, Michigan (Rental Building).*

**That in response to paragraph twenty-nine of the Complaint, the respondents, DAVID COHEN and HARRY COHEN COMPANY, INC. admit Paragraph 24 as true. FURTHER, Harry Cohen Company Inc. admits that, as the owner of the property, it executed a rental agreement for 8070 E. Hildale, Upper Rear, Detroit, Michigan.**

*30. The contract referenced in paragraph 29, above, covered a term of occupancy greater than 100-days.*

**Respondents believe that the rental agreement speaks for itself and that no further answer to paragraph 30 is required.**

31. *Between July 5, 1984 and August 18, 2003, Respondents, as the owners of the Rental Building, offered for lease and apartment within their Rental Building and an individual entered into a contract on the date listed in paragraph 29, above, to lease an apartment with the Rental Building.*

**Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 31 and, therefore, deny the same. In further explanation, Respondent David Cohen denies that at any time he was the owner of any "rental building."**

32. *On August 15, 1996, the Detroit Department of Health conducted an inspection at 8070 E. Hildale, Detroit, Michigan, which identified violations of the State of Michigan and City of Detroit Health and Safety Codes for lead-based paint hazards.*

**Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 32 and, therefore, deny the same.**

33. *By letter, the Detroit Health Department directed Harry Cohen to address lead-based paint hazards found during the August 15, 1996, inspection on interior walls and ceilings and exterior front and rear porches.*

**Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 33 and, therefore, deny the same.**

34. *Porches are common areas as defined at 40 C.F.R. §745.103.*

**Respondents state that the statute speaks for itself and that no further answer to paragraph 34 is required.**

*35. Respondents are "lessors" as defined by 40 C.F.R. §745.103, since they have offered the target housing referenced in paragraph 29, above, for lease.*

**Respondent David Cohen denies that he is a Lessor as alleged in paragraph 35. Respondent Harry Cohen Company, Inc. lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 35 and, therefore, denies the same.**

*36. The individual who signed a lease to pay rent in exchange for occupancy of an apartment within the Rental Building, referenced in paragraph 29, above, became a "lessee" as defined in 40 C.F.R. §745.103, since they entered into an agreement to lease target housing.*

**Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 36 and, therefore, deny the same.**

*37. On March 2, 2005, Respondents entered into the following written sales agreement (contract) with an individual for the sale of the residential Building at 8070 Hildale Street, Detroit, Michigan.*

**Respondent Harry Cohen Companies, Inc. admits that it entered into a sales agreement for property located at 8070 Hildale Street, Detroit, Michigan. Respondent David Cohen Denies that he entered into a sales agreement on his behalf.**

*38. Respondents Residential Dwelling referenced in paragraph 37, above, was constructed prior to 1978.*

**Admit Paragraph 38.**

39. Respondents Residential Dwelling referenced in paragraph 37, above, is "target housing" as defined in 40 C.F.R. §745.103.

**Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 39 and, therefore, deny the same.**

40. Prior to the date of sale referenced in paragraph 37, above, Respondents were the owners and/or held legal title to the Residential Dwelling, as referenced in paragraph 37, above.

**Respondent Harry Cohen Companies, Inc. admits that it previously held legal title for property located at 8070 Hildale Street, Detroit, Michigan.**

**Respondent David Cohen denies that he ever held legal title for 8070 Hildale Street, Detroit, Michigan.**

41. As a result of the contract to sell the Residential Dwelling, referenced in paragraphs 37 and 40 above, above, Respondents became a "seller" as defined in 40 C.F.R. §745.103.

**Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 41 and, therefore, deny the same.**

42. As a result of the contract to sell, the individual who entered into an agreement to purchase the Residential Dwelling referenced in paragraph 37, above, became a "purchaser", as defined in 40 C.F.R. §745.103.

**Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 42 and, therefore, deny the same.**



43. *By certified letter dated May 30, 2008, U.S. EPA attempted to advise Respondents that U.S. EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 and that Section 1018 authorizes U.S. EPA to assess a civil administrative penalty. In that letter, U.S. EPA asked Respondents to identify any factors Respondents thought U.S. EPA should consider before issuing the complaint. If a Respondent believed there were financial factors which bore on either Respondents ability to pay a civil penalty, U.S. EPA's letter asked Respondents to submit specific financial documents. This letter was sent by certified mail with a return receipt, addressed to David Cohen, Registered Agent for the Harry Cohen Company, Inc. The United States Post Office returned the May 30, 2008 letter to the U.S. EPA marked "refused", indicating that registered agent David Cohen refused receipt of U.S. EPA's certified letter. On August 8, 2008, U.S. EPA sent a second letter to Respondents enclosing a copy of U.S. EPA's May 30, 2008. To date, Respondents have provided no response to U.S. EPA's letters.*

**Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation in paragraph 43 and, therefore, deny the same.**

44. *The Director of Land and Chemicals Division, U.S. EPA, Region 5, has determined the Respondents have violated the federal regulations regarding the disclosure of lead-based paint and/or lead based paint hazards, 40 C.F.R. §745, as described below, and thereby violated Section 409 of TSCA, 15 U.S.C. §2689.*

**Paragraph 44 of the Complaint contains legal assertions or conclusions**

to which no responsive pleading is required. As to the remainder of assertions in paragraph 44, Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 44. Therefore, except as expressly admitted herein, Respondents denies the rest and remainder of paragraph 44.

**Failure to Disclose in Rental Transactions**

**Count I**

45. *Paragraphs 1 through 44, above, are realleged and incorporated by reference.*

**Paragraph 45 contains an assertion to which no response is required.**

46. *40 C.F.R. §745.100 requires, among other things, that the lessor completes the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. §745.113(b) (2) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before a lessee is obligated under the contract to lease target housing.*

**Respondents state that the statutes speak for themselves and that no further answer to paragraph 46 is required.**

47. **Count 1:** *Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing the presence of any known lead-based paint and lead-based paint hazards in the target housing, including the information referenced in paragraphs 33 and 46, above, before the lessee at 8070 E. Hildale, Upper Rear, Detroit, Michigan, was obligated under the August 18, 2003 contract referenced in paragraph 29, above.*

**Respondent David Cohen denies that he ever entered into a contract for property at 8070 E. Hildale, Upper Rear, Detroit, Michigan. Respondent Harry Cohen Company, Inc. denies all allegations in paragraph 47. FURTHERMORE, the respondents would affirmative state that they were in full compliance with the statute that required disclosure.**

*48. Respondents failure to include, either within each contract or as an attachment to each contract, a statement disclosing the presence of any known lead-based paint and lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee was obligated under the contract for the leasing transaction referenced in paragraphs 47, above, constitutes a violation of 40 C.F.R. §745.113(b) (2), of 42 U.S.C. §4852d(b)(5), and of Section 409 of TSCA.*

**Paragraph 48 of the Complaint contains legal assertions or conclusions to which no responsive pleading is required. As to the remainder of assertions in paragraph 48, Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 48. Therefore, except as expressly admitted herein, Respondents denies the rest and remainder of paragraph 48.**

**Count 2**

*49. Paragraphs 1 through 44, above, are realleged and incorporated by reference.*

**Paragraph 49 contains an assertion to which no response is required.**

*50. 40 C.F.R. §745.100 requires, among other things, that the lessor completes the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. §745.113(b) (3) requires a lessor to include, either within each contract or as an attachment to each contract to lease target*

*housing, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before a lessee is obligated under the contract to lease target housing.*

**Respondents state that the statutes speak for themselves and that no further answer to paragraph 50 is required.**

*51. Count 2: Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, including the letter referenced in paragraphs 33, above, before the lessee at 8070 E. Hildale, Upper Rear, Detroit, Michigan, was obligated under the August 18, 2003 contract referenced in paragraph 29, above.*

**Respondent David Cohen denies that he ever entered into a contract for property at 8070 E. Hildale, Upper Rear, Detroit, Michigan. Respondent Harry Cohen Company, Inc. denies all allegations in paragraph 51.**

*52. Respondents failure to include, either within each contract or as an attachment to each contract, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee was obligated under the contract for the leasing transaction referenced in paragraph 51, above, constitutes a violation of 40 C.F.R. §745.113(b) (3), of 42 U.S.C. §4852d(b)(5), and of Section 409 of TSCA.*

**Paragraph 52 of the Complaint contains legal assertions or conclusions to which no responsive pleading is required. As to the remainder of assertions in paragraph 52, Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 52. Therefore, except as expressly admitted herein, Respondents denies the rest and remainder of paragraph 52.**

**Count 3**

*53. Paragraphs 1 through 44, above, are realleged and incorporated by reference.*

**Paragraph 53 contains an assertion to which no response is required.**

*54. 40 C.F.R. §745.100 requires, among other things, that the lessor completes the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. §745.113(b) (4) requires a lessor to include, either within each contract or as an attachment to each contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §745.113(b) (2) and (b) (3) and the Lead Hazard Information Pamphlet before a lessee is obligated under the/each contract to lease target housing.*

**Respondents state that the statutes speak for themselves and that no further answer to paragraph 54 is required.**

*55. Count 3: Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §745.113(b) (2) and (b) (3) and the Lead Hazard Information Pamphlet before the lessee at 8070 E. Hildale, Upper Rear, Detroit, Michigan, was obligated under the August 18, 2003 contract referenced in paragraph 29, above.*

**Respondent David Cohen denies that he ever entered into a contract for property at 8070 E. Hildale, Upper Rear, Detroit, Michigan. Respondent Harry Cohen Company, Inc. denies all allegations in paragraph 55.**

*56. Respondents failure to include, either within each contract or as an attachment to each contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §745.113(b) (2) and (b)(3) and the Lead Hazard Information Pamphlet before the lessee was obligated under the contract for the leasing transaction referenced in paragraph 55, above, constitutes a violation of 40 C.F.R. §745.113(b) (4), of 42 U.S.C. §4852d(b)(5), and of Section 409 of TSCA.*

**Paragraph 56 of the Complaint contains legal assertions or conclusions to which no responsive pleading is required. As to the remainder of assertions in paragraph 56, Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 56. Therefore, except as expressly admitted herein, Respondents denies the rest and remainder of paragraph 56.**

**Count 4**

*57. Paragraphs 1 through 44, above, are realleged and incorporated by reference.*

**Paragraph 57 contains an assertion to which no response is required.**

*58. 40 C.F.R. §745.100 requires, among other things, that the lessor completes the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. §745.113(b) (6) requires a lessor to include, either within each contract or as an attachment to each contract, the signatures of the lessor and the lessee certifying the accuracy of their statements to the best of their*

*knowledge along with the dates of signature before a lessee is obligated under the contract to lease target housing.*

**Respondents state that the statutes speak for themselves and that no further answer to paragraph 58 is required.**

*59. Count 4: Respondents failed to include, either within the contract or as an attachment to the contract, the signatures of the lessor and the lessee certifying the accuracy of their statements to the best of their knowledge along with the dates of signature before the lessee at 8070 E. Hildale, Upper Rear, Detroit, Michigan, was obligated under the August 18, 2003 contract referenced in paragraph 29, above.*

**Respondent David Cohen denies that he ever entered into a contract for property at 8070 E. Hildale, Upper Rear, Detroit, Michigan. Respondent Harry Cohen Company, Inc. denies all allegations in paragraph 59.**

*60. Respondents failure to include, either within each contract or as an attachment to each contract, the signatures of the lessor and the lessee certifying the accuracy of their statements or the dates of such signature before the lessees were obligated under the contract for the leasing transaction referenced in paragraph 59, above, constitutes a violation of 40 C.F.R. §745.113(b) (6), of 42 U.S.C. §4852d (b) (5), and of Section 409 of TSCA.*

**Paragraph 60 of the Complaint contains legal assertions or conclusions to which no responsive pleading is required. As to the remainder of assertions in paragraph 60, Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations**

contained in paragraph 60. Therefore, except as expressly admitted herein, Respondents denies the rest and remainder of paragraph 60.

**Failure to Disclose in Sales Transaction**

**Count 5**

61. *Paragraphs 1 through 44, above, are realleged and incorporated by reference.*

**Paragraph 61 contains an assertion to which no response is required.**

62. *40 C.F.R. §745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. §745.113(a) (2) requires a seller to include in an attachment to each contract to sell target housing a statement by the seller disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence*

**Respondents state that the statutes speak for themselves and that no further answer to paragraph 62 is required.**

63. *Count 5: Respondents failed to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence in an attachment to the sales contract for 8070 E. Hildale, Detroit, Michigan, in the March 2, 2005 contract referenced in paragraph 37, above.*

**Respondent David Cohen denies that he ever entered into a contract for property at 8070 E. Hildale, Upper Rear, Detroit, Michigan. Respondent Harry Cohen Company, Inc. denies all allegations in paragraph 63.**

64. *Respondents failure to include a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or a*



*lack of knowledge of such presence in an attachment to the contract to sell target housing as referenced in paragraph 63, above, constitutes a violation of 40 C.F.R. §745.113(a) (2), of 42 U.S.C. §4852d (b) (5), and of Section 409 of TSCA, 15 U.S.C. §2689.*

**Paragraph 64 of the Complaint contains legal assertions or conclusions to which no responsive pleading is required. As to the remainder of assertions in paragraph 64, Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 64. Therefore, except as expressly admitted herein, Respondents denies the rest and remainder of paragraph 64.**

**Count 6**

*65. Paragraphs 1 through 44, above, are realleged and incorporated by reference.*

**Paragraph 65 contains an assertion to which no response is required.**

*66. 40 C.F.R. §745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. §745.113(a) (3) requires a seller to include in an attachment to each contract to sell target housing a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist .*

**Respondents state that the statutes speak for themselves and that no further answer to paragraph 66 is required.**

*67. Count 6: Respondents failed to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist in an attachment to the sales*

*contract for 8070 E. Hildale, Detroit, Michigan, in the March 2, 2005 contract referenced in paragraph 37, above.*

**Respondent David Cohen denies that he ever entered into a contract for property at 8070 E. Hildale, Upper Rear, Detroit, Michigan. Respondent Harry Cohen Company, Inc. denies all allegations in paragraph 67.**

*68. Respondents failure to include a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing or a statement that no such records exist in an attachment to the contract to sell target housing, as referenced in paragraph 67, above, constitutes a violation of 40 C.F.R. §745.113(a) (3), of 42 U.S.C. §4852d (b) (5), and Section 409 of TSCA, 15 U.S.C. §2689.*

**Paragraph 68 of the Complaint contains legal assertions or conclusions to which no responsive pleading is required. As to the remainder of assertions in paragraph 68, Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 68. Therefore, except as expressly admitted herein, Respondents denies the rest and remainder of paragraph 68.**

**Count 7**

*69. Paragraphs 1 through 44, above, are realleged and incorporated by reference.*

**Paragraph 69 contains an assertion to which no response is required.**

*70. 40 C.F.R. §745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. §745.113(a) (4) requires the seller to include in an attachment to each contract to sell target housing, a statement by the*

*purchaser affirming receipt of the information set out in 40 C.F.R. §745.113(a) (2) and (3) and the Lead Hazard Information Pamphlet required by 15 U.S.C. §2696.*

**Respondents state that the statutes speak for themselves and that no further answer to paragraph 70 is required.**

*71. Count 7: Respondents failed to include a statement by the purchaser affirming receipt of the information set out in 40 C.F.R. §745.113(a) (2) and (3) and the Lead Hazard Information Pamphlet required by 15 U.S.C. §2696 in an attachment to the sales contract for 8070 E. Hildale, Detroit, Michigan, in the March 2, 2005 contract referenced in paragraph 237, above.*

**Respondent David Cohen denies that he ever entered into a contract for property at 8070 E. Hildale, Upper Rear, Detroit, Michigan. Respondent Harry Cohen Company, Inc. denies all allegations in paragraph 71. FURTHER, the respondents would affirmatively state that they were in full compliance with the statute.**

*72. Respondents failure to include a statement from the purchaser affirming receipt of the information set out in 40 C.F.R. §745.113(a) (2) and (3) and the Lead Hazard Information Pamphlet required by 15 U.S.C. §2696 in an attachment to sell target housing as referenced in paragraph 71, above, constitutes a violation of 40 C.F.R. §745.113(a) (4), of 42 U.S.C. §4852d (b) (5), and of Section 409 of TSCA, 15 U.S.C. §2689.*

**Paragraph 72 of the Complaint contains legal assertions or conclusions to which no responsive pleading is required. As to the remainder of assertions in paragraph 72, Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations**

contained in paragraph 72. Therefore, except as expressly admitted herein, Respondents denies the rest and remainder of paragraph 72.

**Count 8**

73. *Paragraphs 1 through 44, above, are realleged and incorporated by reference.*

**Paragraph 73 contains an assertion to which no response is required.**

74. *40 C.F.R. §745.100 requires, among other things, that the seller or lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 40 C.F.R. §745.113(a) (7) requires the seller to include in an attachment to each contract to sell contract housing the signatures of the seller, agent and the purchaser certifying the accuracy of their statements to the best of their knowledge along with the dates of signature.*

**Respondents state that the statutes speak for themselves and that no further answer to paragraph 74 is required.**

75. *Count 8: Respondents failed to include the signatures of the seller, agent and the purchaser certifying the accuracy of their statements along with the dates of such signatures in an attachment to the sales contract for 8070 E.. Hildale, Detroit, Michigan, in the March 2, 2005 contract referenced in paragraph 237, above.*

**Respondent David Cohen denies that he ever entered into a contract for property at 8070 E. Hildale, Upper Rear, Detroit, Michigan. Respondent Harry Cohen Company, Inc. denies all allegations in paragraph 75.**

76. *Respondents failure to include the signatures of the seller, agent and the purchaser certifying the accuracy of their statements along with the dates of such signatures, required by 40 C.F.R. §745.113(a) (7) in an attachment to the contract*

*to sell target housing as referenced in paragraph 75, above, constitutes a violation of 42 U.S.C. §4852d (b) (5) and of Section 409 of TSCA, 15 U.S.C. §2689.*

**Paragraph 76 of the Complaint contains legal assertions or conclusions to which no responsive pleading is required. As to the remainder of assertions in paragraph 76, Respondents lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 76. Therefore, except as expressly admitted herein, Respondents denies the rest and remainder of paragraph 76.**

#### **Respondents Affirmative Defenses**

Respondents allege the following affirmative defenses to the Complaint. In asserting these affirmative defenses, Respondents do not assume the burden to establish any fact or proposition where that burden is properly imposed on the Complainant.

1. Complainant has failed to state a claim upon which relief may be granted.
2. Complainant has failed to plead sufficient facts to establish a right to recover under the Toxic Substances Control Act (TSCA), 15 U.S.C. §2615(a).
3. Complainant's claims are barred, either in whole or in part, by the absence of subject matter jurisdiction.
4. Complainant lacks U.S. constitutional standing to maintain the claims asserted in the Complaint.
5. Complainant lacks standing under the Toxic Substances Control Act (TSCA), 15 U.S.C. §2615(a) to maintain the claims asserted in the Complaint.

6. Complainant's claims against Respondent David Cohen are without merit because all properties and contracts at issue were executed by Respondent Harry Cohen Companies, Inc.
7. Complainant's claims are barred, either in whole or part, because they allege wholly past violations that are not likely to be repeated.
8. Complainant has failed to satisfy all conditions precedent to bringing this action.
9. The Complainant and each cause of action therein may be barred, in whole or in part, to the extent that Complainant has waived or is estopped from, or barred by the doctrine of laches from asserting such causes of action.
10. Respondents presently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available. Respondents reserve the right to assert additional defenses that are revealed by further investigation or discovery.
11. That the LBP Disclosure Rule stated herein applies to sales or leases of interests in properties known as "target housing." This term generally includes all residential dwellings, including apartment buildings, constructed prior to 1978. EXCLUDED from the definition of "target housing" are residences such as studio apartments where the living area is not separated from the sleeping area and residences for the elderly and disabled, unless, in either case, children under six years of age are living in these residences. Also excluded are rental transactions of "target housing" that are certified to be free of LBP by certified inspectors. That these exceptions apply in the case at bar.

12. The LBP Disclosure Rule does not apply to short-term leases of less than 100 days where no extension or renewal may occur.
13. The LBP Disclosure Rule does not require disclosure of new information that a lessor becomes aware of during the term of a lease through the information would have to be disclosed when the lease was renewed.
14. That the respondents have fully complied in accordance with Sipes vs. Russell, 89 F. Supp 2d 1199 (Kan., 2000).
15. That the respondent, DAVID COHEN, is not a proper party and there is no privity of contract between DAVID COHEN and any third party.

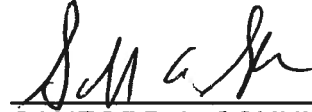
### **CONCLUSION**

Wherefore, the Respondents, DAVID COHEN and HARRY COHEN COMPANIES, INC, by and through their attorneys, SANFORD A. SCHULMAN, and BRADLEY J. Hobb, respectfully request for judgment or relief against the Complainant as follows:

1. That the claims against Respondent David Cohen and Respondent Harry Cohen Companies, Inc. be dismissed and the complainant take nothing;
2. That Respondents be awarded attorneys' fees, costs and disbursements incurred in defending this matter;
3. Such other and further relief, including declaratory, equitable relief and damages, as this Court deems just and proper.

4. The respondents, DAVID COHEN and HARRY COHEN COMPANY, INC.  
hereby request a formal hearing pursuant to 15 U.S.C. § 2615(a)(2)(A).

Respectfully submitted,



Dated: September 25, 2008

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Detroit, Michigan 48226  
(313) 963-4740



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Docket No.: TSCA-05-2008-0021

David Cohen and  
Harry Cohen Company, Inc.

Respondents.

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MARGARET M. GUERRIERO  
Director, Land and Chemicals Division  
United States Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, ILL 60604-3590  
(312) 886-6237

SANFORD A. SCHULMAN  
BRADLEY J. HOBBS  
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**PROOF OF SERVICE**

STATE OF MICHIGAN )  
  )ss  
COUNTY OF WAYNE )

SANFORD A. SCHULMAN, affirms, deposes and states that on the 26th  
Day of September, 2008 he did cause to be served the following:


1. Respondents DAVID COHEN and HARRY COHEN'S COMPANY INC.  
Answer to Complaint and Affirmative Defenses;
2. Proof of Service

UPON:

MARGARET M. GUERRIERO  
Director, Land and Chemicals Division  
United States Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, ILL 60604-3590

By placing said copies in a properly addressed envelope with sufficient postage fully prepaid, and placing in a U.S. Mail Receptacle.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
SANFORD A. SCHULMAN