

1 SYLVIA A. QUAST
Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6 coral.edgar@epa.gov

** FILED **
24SEP2018 - 11:40AM
U.S.EPA - Region 09

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8 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10
11 In the Matter of:) Docket No. TSCA-09-2018-0007
12)
McNamara Realty,) COMPLAINT AND NOTICE OF
13) OPPORTUNITY FOR HEARING
14 Respondent.)
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16 I. AUTHORITY AND PARTIES

17 1. This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic
18 Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). Section 16(a) of TSCA and Section
19 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42
20 U.S.C. § 4852d ("Section 1018"), authorize the Administrator of the United States
21 Environmental Protection Agency ("EPA") to issue a civil complaint for each violation of
22 Section 409 of TSCA, 15 U.S.C. § 2689.

23 2. Complainant is the Chief of the Waste and Chemical Section in the Air, Waste and
24 Toxics Branch of the Enforcement Division, EPA, Region IX, who has been duly delegated the
25 authority to bring this action. Respondent is McNamara Realty, a California corporation with
26 offices located at 390 Higuera Street in San Luis Obispo, California, that sold and leased
27 residential properties located in San Luis Obispo and Morro Bay, California.
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1 3. This Complaint and Notice of Opportunity for Hearing (“Complaint”) serves as notice
2 that Complainant has reason to believe that Respondent violated Section 409 of TSCA by failing
3 to comply with Section 1018 and federal regulations promulgated to implement Section 1018 at
4 40 C.F.R. Part 745, Subpart F.

5 II. GENERAL ALLEGATIONS

6 4. EPA has jurisdiction over this matter pursuant to Section 1018.

7 5. 40 C.F.R. Part 745, Subpart F implements the provisions of Section 1018 that impose
8 certain disclosure requirements concerning lead-based paint and/or lead-based paint hazards
9 upon the sale or lease of target housing.

10 6. “Target housing” means any housing constructed prior to 1978, except housing for the
11 elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is
12 expected to reside in such housing) or any 0-bedroom dwelling. 40 C.F.R. § 745.103.

13 7. “Seller” means any entity that transfers legal title to target housing, in whole or in part,
14 in return for consideration, including but not limited to individuals, partnerships, corporations,
15 trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40
16 C.F.R. § 745.103.

17 8. “Purchaser” means any entity that enters into an agreement to purchase an interest in
18 target housing, including but not limited to individuals, partnerships, corporations, trusts,
19 government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. §
20 745.103.

21 9. “Lessor” means any entity that offers target housing for lease, rent or sublease,
22 including but not limited to individuals, partnerships, corporations, trusts, government agencies,
23 housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. § 745.103.

24 10. “Lessee” means any entity that enters into an agreement to lease, rent, or sublease
25 target housing, including but not limited to individuals, partnerships, corporations, trusts,
26 government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. §
27 745.103.

1 11. "Agent" means any party who enters into a contract with a seller or lessor, including
2 any party who enters into a contract with a representative of the seller or lessor, for the purpose
3 of selling or leasing target housing. 40 C.F.R. § 745.103.

4 12. At all times relevant to this Complaint, Respondent was a "seller" of and "agent" for
5 the two residential properties located at 377 Fairview Avenue in Morro Bay, California (the
6 "Fairview Property") and 1190 Green Oaks Drive, San Luis Obispo California (the "Green Oaks
7 Property"), as those terms are defined at 40 C.F.R. § 745.103.

8 13. At all times relevant to this Complaint, Respondent was a "lessor" of the residential
9 properties located at 367 Branch Street, 1763 Santa Barbara Street, 516 Higuera Street, 1717
10 Santa Barbara Street, 1354 Peach Street, 712 Upham Street, and 2102 Loomis Street in San Luis
11 Obispo, California, as that term is defined at 40 C.F.R. § 745.103.

12 14. At all times relevant to this Complaint, the residential properties referenced in
13 Paragraphs 12 and 13 were "target housing," as that term is defined at 40 C.F.R. § 745.103.

14 15. On or around November 13, 2015 and January 17, 2017, Respondent entered into a
15 sales contract for the Fairview Property and the Green Oaks Property, respectively.

16 16. On or around the dates listed below, Respondent entered into leases for the
17 residential properties listed below for occupancies greater than 100 days or 100 days or less
18 where lease renewals or extensions could occur (collectively, the "Subject Leases"):

<u>Address</u>	<u>Date of Lease</u>
1) 367 Branch Street, San Luis Obispo, CA	September 2, 2015
2) 1763 Santa Barbara Street #1, San Luis Obispo, CA	August 5, 2015
3) 1763 Santa Barbara Street #2, San Luis Obispo, CA	August 1, 2015
4) 1763 Santa Barbara Street #3, San Luis Obispo, CA	August 4, 2015
5) 516 Higuera Street, San Luis Obispo, CA	September 1, 2015
6) 1717 Santa Barbara Street #1, San Luis Obispo, CA	August 4, 2015
7) 1717 Santa Barbara Street #2, San Luis Obispo, CA	July 2, 2015
8) 1717 Santa Barbara Street #2, San Luis Obispo, CA	July 2, 2015
9) 1717 Santa Barbara Street #4, San Luis Obispo, CA	July 1, 2015
10) 1354 Peach Street, San Luis Obispo, CA	July 9, 2015
11) 1717 Santa Barbara Street #4, San Luis Obispo, CA	March 4, 2016
12) 1763 Santa Barbara Street #3, San Luis Obispo, CA	August 1, 2016
13) 712 Upham Street, San Luis Obispo, CA	March 15, 2016
14) 1354 Peach Street, San Luis Obispo, CA	July 6, 2016
15) 1717 Santa Barbara Street #1, San Luis Obispo, CA	August 5, 2016
16) 1717 Santa Barbara Street #2, San Luis Obispo, CA	December 16, 2016

1	17)	1717 Santa Barbara Street #3, San Luis Obispo, CA	January 5, 2016
	18)	1717 Santa Barbara Street #4, San Luis Obispo, CA	February 17, 2017
2	19)	367 Branch Street, San Luis Obispo, CA	September 7, 2016
	20)	1763 Santa Barbara Street #1, San Luis Obispo, CA	August 4, 2016
3	21)	1763 Santa Barbara Street #2, San Luis Obispo, CA	August 4, 2016
	22)	2102 Loomis Street, San Luis Obispo, CA	August 1, 2016
4	23)	516 Higuera Street, San Luis Obispo, CA	September 7, 2016

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III. ALLEGED VIOLATIONS

COUNT 1: Failure to comply with 40 C.F.R. § 107(a)(1)

17. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if set forth herein in full.

18. Before a purchaser is obligated under any contract to purchase target housing, the seller shall provide the purchaser with an EPA-approved lead hazard information pamphlet. 40 C.F.R. § 745.107(a)(1).

19. At the time that Respondent entered into the sales contract for the Fairview Property, Respondent failed to provide the purchaser with an EPA-approved lead hazard information pamphlet, as required by 40 C.F.R. § 745.107(a)(1).

20. Respondent's failure to provide the purchaser with an EPA-approved lead hazard information pamphlet at the time of entering into the sales contract for the Fairview Property constitutes a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS 2-3: Failure to comply with 40 C.F.R. § 113(a)(1)

21. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if set forth herein in full.

22. Each contract to sell target housing shall include, as an attachment, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(a)(1). 40 C.F.R. § 745.113(a)(1).

23. At the time that Respondent entered into the sales contracts for the Fairview and Green Oaks Properties, Respondent failed to include in the contracts, as an attachment, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(a)(1), as required by 40 C.F.R. § 745.113(a)(1).

1 24. Respondent's failures to include in the sales contracts for the Fairview and Green
2 Oaks Properties, as an attachment, a Lead Warning Statement containing language provided in
3 40 C.F.R. § 745.113(a)(1) at the time of entering into the sales contracts constitutes two
4 violations of 40 C.F.R. § 745.113(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

5 COUNTS 4-5: Failure to comply with 40 C.F.R. § 113(a)(2)

6 25. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
7 set forth herein in full.

8 26. Each contract to sell target housing shall include, as an attachment, a statement by the
9 seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the
10 target housing being sold or indicating no knowledge of the presence of lead-based paint and/or
11 lead-based paint hazards. 40 C.F.R. § 745.113(a)(2).

12 27. At the time that Respondent entered into the sales contracts for the Fairview and
13 Green Oaks Properties, Respondent failed to include in the contracts, as an attachment, a
14 statement by Respondent disclosing the presence of known lead-based paint and/or lead-based
15 paint hazards in the properties being sold or indicating no knowledge of the presence of lead-
16 based paint and/or lead-based paint hazards, as required by 40 C.F.R. § 745.113(a)(2).

17 28. Respondent's failures to include in the sales contracts for the Fairview and Green
18 Oaks Properties, as an attachment, a statement by the seller disclosing the presence of known
19 lead-based paint and/or lead-based paint hazards in the properties being sold or indicating no
20 knowledge of the presence of lead-based paint and/or lead-based paint hazards at the time of
21 entering into the sales contracts constitutes two violations of 40 C.F.R. § 745.113(a)(2) and
22 Section 409 of TSCA, 15 U.S.C. § 2689.

23 COUNTS 6-7: Failure to comply with 40 C.F.R. § 745.113(a)(3)

24 29. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
25 set forth herein in full.

26 30. Each contract to sell target housing shall include, as an attachment, a list of any
27 records or reports available to the seller pertaining to lead-based paint and/or lead-based paint
28 hazards in the target housing that have been provided to the purchaser or an indication that no

1 such records or reports are available. 40 C.F.R. § 745.113(a)(3).

2 31. At the time that Respondent entered into the sales contracts for the Fairview and
3 Green Oaks Properties, Respondent failed to include in the contracts, as an attachment, a list of
4 any records or reports available to Respondent pertaining to lead-based paint and/or lead-based
5 paint hazards in the properties that have been provided to the purchaser or an indication that no
6 such records or reports are available, as required by 40 C.F.R. § 745.113(a)(3).

7 32. Respondent's failures to include in the sales contracts for the Fairview and Green
8 Oaks Properties, as an attachment, a list of any records or reports available to Respondent
9 pertaining to lead-based paint and/or lead-based paint hazards in the properties that have been
10 provided to the purchaser or an indication that no such records or reports are available at the time
11 of entering into the sales contracts constitutes two violations of 40 C.F.R. § 745.113(a)(3) and
12 Section 409 of TSCA, 15 U.S.C. § 2689.

13 COUNTS 8-9: Failure to comply with 40 C.F.R. § 745.113(a)(4)

14 33. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
15 set forth herein in full.

16 34. Each contract to sell target housing shall include, as an attachment, a statement by the
17 purchaser affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(a)(2) and (3) and
18 the lead hazard information pamphlet required under 15 U.S.C. § 2696. 40 C.F.R. §
19 745.113(a)(4).

20 35. At the time that Respondent entered into the sales contracts for the Fairview and
21 Green Oaks Properties, Respondent failed to include in the contracts, as an attachment, a
22 statement by the purchaser affirming receipt of the information set forth in 40 C.F.R. §§
23 745.113(a)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. §
24 2696, as required by 40 C.F.R. § 745.113(a)(4).

25 36. Respondent's failures to include in the sales contracts for the Fairview and Green
26 Oaks Properties, as an attachment, a statement by the purchaser affirming receipt of the
27 information set forth in 40 C.F.R. §§ 745.113(a)(2) and (3) and the lead hazard information
28 pamphlet required under 15 U.S.C. § 2696 at the time of entering into the sales contracts

1 constitutes two violations of 40 C.F.R. § 745.113(a)(4) and Section 409 of TSCA, 15 U.S.C. §
2 2689.

3 COUNTS 10-11: Failure to comply with 40 C.F.R. § 745.113(a)(5)

4 37. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
5 set forth herein in full.

6 38. Each contract to sell target housing shall include, as an attachment, a statement by the
7 purchaser that he/she has either received the opportunity to conduct the risk assessment or
8 inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity. 40 C.F.R. §
9 745.113(a)(5).

10 39. At the time that Respondent entered into the sales contracts for the Fairview and
11 Green Oaks Properties, Respondent failed to include in the contracts, as an attachment, a
12 statement by the purchaser that he/she has either received the opportunity to conduct the risk
13 assessment or inspection required by 40 C.F.R. § 745.110(a) or waived the opportunity, as
14 required by 40 C.F.R. § 745.113(a)(5).

15 40. Respondent's failures to include in the sales contracts for the Fairview and Green
16 Oaks Properties,, as an attachment, a statement by the purchaser that he/she has either received
17 the opportunity to conduct the risk assessment or inspection required by 40 C.F.R. § 745.110(a)
18 or waived the opportunity at the time of entering into the sales contracts constitutes two
19 violations of 40 C.F.R. § 745.113(a)(5) and Section 409 of TSCA, 15 U.S.C. § 2689.

20 COUNTS 12-13: Failure to comply with 40 C.F.R. § 745.113(a)(6)

21 41. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
22 set forth herein in full.

23 42. When one or more agents are involved in the transaction to sell target housing on
24 behalf of the seller, each contract to sell target housing shall include, as an attachment, a
25 statement that the agent has informed the seller of the seller's obligations under Section 1018 and
26 the agent is aware of his/her duties to ensure compliance with the requirements of 40 C.F.R. Part
27 745, Subpart F. 40 C.F.R. § 745.113(a)(6).

28 43. At the time that Respondent entered into the sales contracts for the Fairview and

1 Green Oaks Properties, Respondent failed to include in the contracts, as an attachment, a
2 statement that the agent has informed the seller of the seller's obligations under Section 1018 and
3 the agent is aware of his/her duties to ensure compliance with the requirements of 40 C.F.R. Part
4 745, Subpart F, as required by 40 C.F.R. § 745.113(a)(6).

5 44. Respondent's failures to include in the sales contracts for the Fairview and Green
6 Oaks Properties, as an attachment, a statement that the agent has informed the seller of the
7 seller's obligations under Section 1018 and the agent is aware of his/her duties to ensure
8 compliance with the requirements of 40 C.F.R. Part 745, Subpart F at the time of entering into
9 the sales contracts constitutes two violations of 40 C.F.R. § 745.113(a)(6) and Section 409 of
10 TSCA, 15 U.S.C. § 2689.

11 COUNTS 14-15: Failure to comply with 40 C.F.R. § 745.113(a)(7)

12 45. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
13 set forth herein in full.

14 46. Each contract to sell target housing shall include, as an attachment, the signatures of
15 the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their
16 knowledge, along with the dates of signature. 40 C.F.R. § 745.113(a)(7).

17 47. At the time that Respondent entered into the sales contracts for the Fairview and
18 Green Oaks Properties, Respondent failed to include in the contracts, as an attachment, the
19 signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to
20 the best of their knowledge, along with the dates of signature, as required by 40 C.F.R. §
21 745.113(a)(7).

22 48. Respondent's failures to include in the sales contracts for the Fairview and Green
23 Oaks Properties, as an attachment, the signatures of the sellers, agents, and purchasers certifying
24 to the accuracy of their statements to the best of their knowledge, along with the dates of
25 signature at the time of entering into the sales contracts constitutes two violations of 40 C.F.R. §
26 745.113(a)(7) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS 16-26: Failure to comply with 40 C.F.R. § 107(a)(1)

49. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if set forth herein in full.

50. Before a lessee is obligated under any contract to lease target housing, the lessor shall provide the lessee with an EPA-approved lead hazard information pamphlet. 40 C.F.R. § 745.107(a)(1).

51. At the time that Respondent entered into each of the Subject Leases #13-23, Respondent failed to provide the lessees with an EPA-approved lead hazard information pamphlet, as required by 40 C.F.R. § 745.107(a)(1).

52. Respondent's failure to provide the lessees with an EPA-approved lead hazard information pamphlet at the time of entering into each of the Subject Leases #13-23 constitutes 11 violations of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

COUNTS 27-49: Failure to comply with 40 C.F.R. § 113(b)(1)

53. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if set forth herein in full.

54. Each contract to lease target housing shall include, as an attachment or within the contract, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(b)(1). 40 C.F.R. § 745.113(b)(1).

55. At the time that Respondent entered into each of the Subject Leases, Respondent failed to include in the Subject Leases, as an attachment or within the contract, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(b)(1), as required by 40 C.F.R. § 745.113(b)(1).

56. Respondent's failures to include in the Subject Leases, as an attachment or within the contract, a Lead Warning Statement containing language provided in 40 C.F.R. § 745.113(b)(1) at the time of entering into each of the Subject Leases constitutes 23 violations of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

1 COUNT 50: Failure to comply with 40 C.F.R. § 745.113(b)(2)

2 57. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
3 set forth herein in full.

4 58. Each contract to lease target housing shall include, as an attachment or within the
5 contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-
6 based paint hazards in the target housing being leased or indicating no knowledge of the presence
7 of lead-based paint and/or lead-based paint hazards. 40 C.F.R. § 745.113(b)(2).

8 59. At the time that Respondent entered into Subject Lease #18, Respondent failed to
9 include in Subject Lease #18, as an attachment or within the contract, a statement by the lessor
10 disclosing the presence of known lead-based paint and/or lead-based paint hazards in the
11 property being leased or indicating no knowledge of the presence of lead-based paint and/or lead-
12 based paint hazards, as required by 40 C.F.R. § 745.113(b)(2).

13 60. Respondent's failure to include in Subject Lease #18, as an attachment or within the
14 contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-
15 based paint hazards in the property being leased or indicating no knowledge of the presence of
16 lead-based paint and/or lead-based paint hazards at the time of entering into Subject Lease #18
17 constitutes a violation of 40 C.F.R. § 745.113(b)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

18 COUNTS 51-73: Failure to comply with 40 C.F.R. § 745.113(b)(3)

19 61. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
20 set forth herein in full.

21 62. Each contract to lease target housing shall include, as an attachment or within the
22 contract, a list of any records or reports available to the lessor pertaining to lead-based paint
23 and/or lead-based paint hazards in the target hearing that have been provided to the lessee or an
24 indication that no such records or reports are available. 40 C.F.R. § 745.113(b)(3).

25 63. At the time that Respondent entered into each of the Subject Leases, Respondent
26 failed to include in the Subject Leases, as an attachment or within the contract, a list of any
27 records or reports available to Respondent pertaining to lead-based paint and/or lead-based paint
28 hazards in the properties that have been provided to the lessees or an indication that no such

1 records or reports are available, as required by 40 C.F.R. § 745.113(b)(3).

2 64. Respondent's failures to include in the Subject Leases, as an attachment or within the
3 contract, a list of any records or reports available to Respondent pertaining to lead-based paint
4 and/or lead-based paint hazards in the properties that have been provided to the lessees or an
5 indication that no such records or reports are available at the time of entering into each of the
6 Subject Leases constitutes 23 violations of 40 C.F.R. § 745.113(b)(3) and Section 409 of TSCA,
7 15 U.S.C. § 2689.

8 COUNTS 74-96: Failure to comply with 40 C.F.R. § 745.113(b)(4)

9 65. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
10 set forth herein in full.

11 66. Each contract to lease target housing shall include, as an attachment or within the
12 contract, a statement by the lessee affirming receipt of the information set forth in 40 C.F.R. §§
13 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. §
14 2696. 40 C.F.R. § 745.113(b)(4).

15 67. At the time that Respondent entered into each of the Subject Leases, Respondent
16 failed to include in the Subject Leases, as an attachment or within the contract, statements by the
17 lessees affirming receipt of the information set forth in 40 C.F.R. §§ 745.113(b)(2) and (3) and
18 the lead hazard information pamphlet required under 15 U.S.C. § 2696, as required by 40 C.F.R.
19 § 745.113(b)(4).

20 68. Respondent's failures to include in the Subject Leases, as an attachment or within the
21 contract, statements by the lessees affirming receipt of the information set forth in 40 C.F.R. §§
22 745.113(b)(2) and (3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696
23 at the time of entering into each of the Subject Leases constitutes 23 violations of 40 C.F.R. §
24 745.113(b)(4) and Section 409 of TSCA, 15 U.S.C. § 2689.

25 COUNTS 97-119: Failure to comply with 40 C.F.R. § 745.113(b)(5)

26 69. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
27 set forth herein in full.

28 70. When one or more agents are involved in the transaction to lease target housing on

1 behalf of the lessor, each contract to lease target housing shall include, as an attachment or within
2 the contract, a statement that the agent has informed the lessor of the lessor's obligations under
3 Section 1018 and the agent is aware of his/her duties to ensure compliance with the requirements
4 of 40 C.F.R. Part 745, Subpart F. 40 C.F.R. § 745.113(b)(5).

5 71. At the time that Respondent entered into each of the Subject Leases, Respondent
6 failed to include in the Subject Leases, as an attachment or within the contract, statements that
7 the agents have informed the lessors of the lessors' obligations under Section 1018 and the agents
8 are aware of their duties to ensure compliance with the requirements of 40 C.F.R. Part 745,
9 Subpart F, as required by 40 C.F.R. § 745.113(b)(5).

10 72. Respondent's failure to include in the Subject Leases, as an attachment or within the
11 contract, statements that the agents have informed the lessors of the lessors' obligations under
12 Section 1018 and the agents are aware of their duties to ensure compliance with the requirements
13 of 40 C.F.R. Part 745, Subpart F at the time of entering into each of the Subject Leases
14 constitutes 23 violations of 40 C.F.R. § 745.113(b)(5) and Section 409 of TSCA, 15 U.S.C. §
15 2689.

16 COUNTS 120-142: Failure to comply with 40 C.F.R. § 745.113(b)(6)

17 73. Paragraphs 4 through 16 above are hereby alleged and incorporated by reference as if
18 set forth herein in full.

19 74. Each contract to lease target housing shall include, as an attachment or within the
20 contract, the signatures of the lessors, agents, and lessees certifying to the accuracy of their
21 statements to the best of their knowledge, along with the dates of signature. 40 C.F.R. §
22 745.113(b)(6).

23 75. At the time that Respondent entered into each of the Subject Leases, Respondent
24 failed to include in the Subject Leases, as an attachment or within the contract, the signatures of
25 the lessors, agents, and lessees certifying to the accuracy of their statements to the best of their
26 knowledge, along with the dates of signature, as required by 40 C.F.R. § 745.113(b)(6).

27 76. Respondent's failures to include in the Subject Leases, as an attachment or within the
28 contract, the signatures of the lessors, agents, and lessees certifying to the accuracy of their

1 statements to the best of their knowledge, along with the dates of signature at the time of entering
2 into each of the Subject Leases constitutes 23 violations of 40 C.F.R. § 745.113(b)(6) and
3 Section 409 of TSCA, 15 U.S.C. § 2689.

4 IV. PROPOSED CIVIL PENALTY

5 Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and Section 1018 authorize civil penalties
6 of not more than \$16,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689,
7 occurring on or before November 2, 2015 and \$17,395 for each violation occurring after
8 November 2, 2015 pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40
9 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation Adjustment Acts of 1990
10 and 2015, Pub. L. 101-410.

11 In assessing any civil penalty, Section 16(a) of TSCA requires that EPA take into account
12 the nature, circumstances, extent, and gravity of the violations; Respondent's history of such
13 violations of TSCA; the degree of culpability involved; Respondent's ability to pay a penalty
14 without jeopardizing their ability to continue to do business; and such other factors as justice may
15 require. Accordingly, Complainant requests that after consideration of these statutory assessment
16 factors, the Administrator assess Respondent a civil administrative penalty of up to \$16,000 or
17 \$17,395 (as applicable) for each of the violations of TSCA set forth above.

18 V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

19 As provided in Section 16(a) of TSCA, 15 U.S.C. 2615(a), you have the right to request a
20 formal hearing to contest any material fact set forth in this Complaint or to contest the
21 appropriateness of the proposed penalty. Any hearing requested will be conducted in accordance
22 with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of
23 Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or
24 Suspension of Permits (the "Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of the
25 Consolidated Rules of Practice is enclosed with this Complaint.

26 **You must file a written Answer within thirty (30) days of receiving this Complaint to**
27 **avoid being found in default, which constitutes an admission of all facts alleged in the**
28 **Complaint and a waiver of the right to a hearing, and to avoid having the above penalty**

1 **assessed without further proceedings.** If you choose to file an Answer, you are required by the
2 Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual
3 allegations contained in this Complaint to which you have any knowledge. If you have no
4 knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny
5 any of the allegations in this Complaint will constitute an admission of the undenied allegation.

6 The Answer shall also state the circumstances and arguments, if any, which are alleged to
7 constitute the grounds of defense, and shall specifically request an administrative hearing, if
8 desired. If you deny any material fact or raise any affirmative defense, you will be considered to
9 have requested a hearing.

10 The Answer must be filed with:

11 Regional Hearing Clerk (ORC-1)
12 U.S. Environmental Protection Agency, Region IX
13 75 Hawthorne Street
14 San Francisco, CA 94105

15 In addition, please send a copy of the Answer and all other documents that you file in this action
16 to:

17 Edgar P. Coral
18 Office of Regional Counsel (ORC-2)
19 U.S. Environmental Protection Agency, Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105

22 You are further informed that the Consolidated Rules of Practice prohibit any *ex parte*
23 (unilateral) discussion of the merits of any action with the Regional Administrator, Regional
24 Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the
25 decision of the case, after the Complaint is issued.

26 VI. INFORMAL SETTLEMENT CONFERENCE

27 EPA encourages all parties against whom a civil penalty is proposed to pursue the
28 possibility of settlement through informal conferences. Therefore, whether or not you request a
hearing, you may confer informally with EPA through Mr. Coral, the EPA attorney assigned to
this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility
of settlement. **An informal settlement conference does not, however, affect your obligation
to file an Answer to this Complaint.**


1 VII. ALTERNATIVE DISPUTE RESOLUTION

2 The parties also may engage in any process within the scope of the Alternative Dispute
3 Resolution Act, 5 U.S.C. § 581 *et seq.*, which may facilitate voluntary settlement efforts.
4 Dispute resolution using alternative means of dispute resolution does not divest the Presiding
5 Officer of jurisdiction nor does it automatically stay the proceeding.

6 VIII. CONSENT AGREEMENT AND FINAL ORDER

7 EPA has the authority, where appropriate, to modify the amount of the proposed penalty
8 to reflect any settlement reached with you in an informal conference or through alternative
9 dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement
10 and Final Order. A Consent Agreement signed by both parties would be binding as to all terms
11 and conditions specified therein when the Regional Judicial Officer signs the Final Order.

12
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14 Dated at San Francisco, California on this 18th day of September, 2018.

15
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17 _____
18 DOUGLAS K. MCDANIEL
19 Chief, Waste and Chemical Section
20 Enforcement Division
21 U.S. Environmental Protection Agency, Region IX
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Certificate of Service

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX and that a true and correct copy of (1) the Complaint and Notice of Opportunity for Hearing; (2) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22; and (3) Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy were sent by U.S. Certified Mail, Return Receipt Requested, to:

Michael P. McNamara
McNamara Realty
390 Higuera Street
San Luis Obispo, CA 93401

Certified Mail # 7015 3010 0000 3883 7134

Date: September 24, 2018



Enforcement Division
U.S. Environmental Protection Agency
Region 9