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U.S.EPA - Region 09

7 Attorney for: McNamara Realty, Respondent

8 UNITED STATES
9 ENVIRONMENTAL PROTECTION AGENCY
10 REGION IX

11
12 *In re Matter of:*

Docket no. TSCA-09-2018-0007

13
14 McNamara Realty,
15
16 Respondent.

RESPONSE OF McNAMARA REALTY
TO COMPLAINT;
REQUEST FOR HEARING

17
18
19 Respondent McNamara Realty responds to Complainant's complaint as follows:

20
21 **Section I: Authority and Parties**

22 (1) Respondent admits the allegations in paragraph 1 and 2 of the complaint.

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24 (2) Respondent admits the allegations in paragraph 3 of the complaint, insofar
25 as it serves as notice that complainant contends it has reason to believe Respondent
26 violated Section 409 of the TSCA.

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Section II: General Allegations

(3) Respondent has insufficient information with which to respond to the allegations set forth in the following paragraph 4 of Complainant's complaint, and on that basis denies them:

(4) Respondent admits the allegations set forth in paragraph 5 of the complaint.

(5) Paragraphs 5 through 11 of the complaint purportedly recite certain provisions of the Code of Federal Regulations, and are not factual allegations; respondent denies them on the basis that the regulations speak for themselves.

(6) Respondent denies being the "seller" for two residential properties referred to as "Fairview Property" and "Green Oaks Properties" in paragraph 12 of the complaint. Respondent served as the agent for the court-appointed Receiver authorized, directed, and monitored by orders of the San Luis Obispo Superior Court to sell said properties. Respondent was informed and believes that the Receiver was exempt from real estate transaction reporting and disclosure requirements.

(7) Respondent admits the allegations set forth in paragraph 13 of the complaint.

(8) Respondent has insufficient information with which to respond to the allegations set forth in the following paragraph 14 of Complainant's complaint, and on that basis denies them:

(9) Respondent denies the allegations set forth in paragraph 15 of the complaint.

1 (10) Respondent admits the allegations set forth in paragraph 16 of the
2 complaint.
3

4 **Section III: Alleged Violations**

5 (11) Respondent incorporates paragraphs 1 through 10, above, in response to
6 the allegations referenced in paragraphs 17, 21, 25, 29, 33, 37, 41, 45, 49, 53, 57, 61,
7 65, 69, and 73 of the complaint.

8 (12) As the allegations contained in paragraphs 18 through 20, 22 through 24,
9 26 through 28, 30 through 32, 34 through 36, 38 through 40, 42 through 44, and 46
10 through 48 of the complaint are predicated on the allegations set forth in paragraph 12
11 of the complaint, they are denied.
12

13 (13) Respondent denies the allegations contained 50 through 52, 54 through
14 56, 58 through 60, 62 through 64, 66 through 68, 70 through 72, and 74 through 76, on
15 the basis that respondent was in substantial compliance with notice requirements.
16

17 **Section IV: Proposed Civil Penalty**

18 (14) Complainant's complaint requests the imposition of a civil penalty, but fails
19 to comply with §22.14(a)(4) of the Consolidated Rules of Practice for seeking a civil
20 penalty, which requires that Complainant either (i) set forth the amount of the civil
21 penalty which is proposed to be assessed and a brief explanation of the proposed
22 penalty, or (ii) where a specific penalty demand is not made, Complainant set forth a
23 brief explanation of the severity of each violation. Accordingly, Complainant ought to
24 be barred from seeking a civil penalty due to its failure to give proper notice.
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Section V: Request for a Hearing

(15) Respondent hereby requests a hearing.

Section VI: Informal Settlement Conference

(16) Respondent is amenable to participating in good faith informal settlement conferences.

Section VII: Request for a Hearing

(17) Respondent is amenable to participating in Alternative Dispute Resolution processes.


Additional Issues

(18) Complainant exercises its authority to seek and propose civil penalties arbitrarily.

(19) Complainant exercises its authority to seek and propose civil penalties in violation of Section 16(a) of the TSCA.

(18) Complainant exercises its authority to seek and propose civil penalties in violation of Constitutional standards. See United States v. Bajakajian.(1998) 524 U.S. 321; Austin v. United States (1993) 509 U.S. 602;

Dated: October 22, 2018



JEFFRY C. RADDING
Attorney for McNamara Realty
Respondent

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PROOF OF SERVICE

I, the undersigned, say that I am a citizen of the United States, over eighteen (18) years of age, and not a party to the within entitled action. I am employed at 1035 Walnut Street, San Luis Obispo, California.

On October 22, 2018, I served the foregoing document:

*Response of McNamara Realty to Complaint;
Request for Hearing*

on the following interested parties:

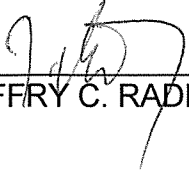
EDGAR P. CORAL
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

(x) **(By Mail - Office)** By placing a true copy thereof in a sealed envelope, with postage prepaid, and by placing said envelope for collection and mailing on said date following ordinary business practices. I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service and said correspondence would be deposited with the United States Postal Service in San Luis Obispo on the said date in the ordinary course of business.

() **(By Mail - Deposit)** By placing a true copy thereof in a sealed envelope, with postage prepaid, and by placing said envelope in the United States mail, at San Luis Obispo, CA.

() **(By Personal Service)** By personally delivering said document to:
:

I declare under penalty of perjury that the foregoing is true and correct, and that this was executed in San Luis Obispo, California on October 22, 2018.



JEFFERY C. RADDING

- 5 -

*Response of McNamara Realty to Complaint;
Request for Hearing*