

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED  
OCT 05 2012  
EPA ORC WS  
Office of Regional Hearing Clerk

\_\_\_\_\_  
IN THE MATTER OF: )  
 )  
JUAN HERNANDEZ )  
585 East Main Street )  
Bridgeport, Connecticut 06608 )  
 )  
RESPONDENT. )  
\_\_\_\_\_

DOCKET NO.: TSCA-01-2012-0029

OCTOBER 4, 2012

ANSWER

I. STATEMENT OF AUTHORITY

1. This paragraph cites and refers to federal statutes, federal regulations, and administrative procedures. This authority shall speak for itself.

II. NATURE OF THE ACTION

2. This paragraph cites and refers to federal statutes and regulations, collectively called the "Disclosure Rule". This authority shall speak for itself. As to the remainder of the paragraph, the Respondent denies the alleged violations.

III. STATUTORY AND REGULATORY BACKGROUND

3. This paragraph cites and refers to statutory and regulatory background concerning the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the "Act"). This authority shall speak for itself.

4. This paragraph cites and refers to federal regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

5. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

6. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

a. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

b. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

c. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

d. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

e. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

f. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

7. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

8. This paragraph cites and refers to federal statutes and regulations pertaining to Disclosure Rule penalties, and the allegation calls for a legal conclusion. This authority shall speak for itself.

9. This paragraph cites and refers to federal statutes and regulations pertaining to Disclosure Rule penalties, and the allegation calls for a legal conclusion. This authority shall speak for itself.

#### **IV. GENERAL ALLEGATIONS**

10. Admitted.

11. Admitted, except that the Properties are properly designated as follows: 563-569 East Main Street, 353-359 Nichols Street, 723-729 Stillman Street, 1072-1074 East Main Street, 347-351 Nichols Street, 572-585 East Main Street, and 800-806 Hallet Street.

12. The Respondent is without sufficient information or knowledge with which to form a belief and therefore, leaves the Complainant to its proof.

13. Admitted as to Respondent offered rental units in the Properties for lease to prospective tenants. As to the remainder of the paragraph, Respondent neither admits nor denies, since the allegations refers to and cites a federal regulation pertaining to the definition of "lessor," and the allegation calls for a legal conclusion. This authority shall speak for itself.

14. Admitted.

15. The Respondent is without sufficient information or knowledge with which to form a belief and therefore, leaves the Complainant to its proof.

16. The Respondent is without sufficient information or knowledge with which to form a belief and therefore, leaves the Complainant to its proof.

17. The Respondent is without sufficient information or knowledge with which to form a belief and therefore, leaves the Complainant to its proof.

a. The Respondent is without sufficient information or knowledge with which to form a belief and therefore, leaves the Complainant to its proof.

b. The Respondent is without sufficient information or knowledge with which to form a belief and therefore, leaves the Complainant to its proof.

c. The Respondent is without sufficient information or knowledge with which to form a belief and therefore, leaves the Complainant to its proof.

d. The Respondent is without sufficient information or knowledge with which to form a belief and therefore, leaves the Complainant to its proof.

## **V. VIOLATIONS**

18. The Respondent is without sufficient information or knowledge with which to form a belief and therefore, leaves the Complainant to its proof.

### **COUNT 1**

19. Respondent incorporates his responses to paragraphs 1-18 of the Statement of Authority, Nature of the Action, Statutory and Regulatory Background, General Allegations, and Violations Sections as if fully set forth herein in response to Count 1.

20. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

21. Denied.

- a. Denied.
- b. Denied.
- c. Denied.
- d. Denied.
- e. Denied.
- f. Denied.
- g. Denied.

22. Denied.

COUNT 2

23. Respondent incorporates his responses to paragraphs 1-22 of the Statement of Authority, Nature of the Action, Statutory and Regulatory Background, General Allegations, and Violations Sections as if fully set forth herein in response to Count 2.

24. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

25. This paragraph appears to cite federal regulations pertaining to the Disclosure Rule. This authority shall speak for itself.

- 26. Denied.
- 27. Denied.
- 28. Denied.
- 29. Denied.
- 30. Denied.

### COUNT 3

31. Respondent incorporates his responses to paragraphs 1-30 of the Statement of Authority, Nature of the Action, Statutory and Regulatory Background, General Allegations, and Violations Sections as if fully set forth herein in response to Count 3.

32. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

33. Denied.

a. Denied.

b. Denied.

c. Denied.

d. Denied.

e. Denied.

34. Denied.

### COUNT 4

35. Respondent incorporates his responses to paragraphs 1-34 of the Statement of Authority, Nature of the Action, Statutory and Regulatory Background, General Allegations, and Violations Sections as if fully set forth herein in response to Count 4.

36. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

37. Denied.

a. Denied.

b. Denied.

c. Denied.

40 (sic). Denied.

#### COUNT 5

41. Respondent incorporates its responses to paragraphs 1-40 of the Statement of Authority, Nature of the Action, Statutory and Regulatory Background, General Allegations, and Violations Sections as if fully set forth herein in response to Count 1.

42. This paragraph cites and refers to federal statutes and regulations pertaining to the Disclosure Rule, and the allegation calls for a legal conclusion. This authority shall speak for itself.

43. Denied.

a. Denied.

b. Denied.

c. Denied.

44. Denied.

45. Denied.

#### VI. PROPOSED PENALTY

46. This paragraph cites and refers to federal statutes and regulations pertaining to penalty guidelines, and the allegation calls for a legal conclusion. This authority shall speak for itself. As to the remainder of the paragraph, the Respondent denies the alleged violations and denies that there is any basis for an assessment of any penalty.

47. The Respondent denies the alleged violations and denies that there is any basis for an assessment of any penalty.

48. The Respondent denies the alleged violations and denies that there is any basis for an assessment of any penalty.

49. To the extent that this paragraph refers to his paragraph appears to federal and administrative law pertaining to a continuing duty to comply, this authority shall speak for itself.

#### **VII. OPPORTUINITY TO REQUEST A HEARING AND FILE ANSWER**

50. This paragraph cites and refers to federal and administrative law pertaining to administrative hearings, and the allegation calls for a legal conclusion. This authority shall speak for itself. As to the remainder of the paragraph, the Respondent is timely filing an Answer, as per Regional Judicial Officer LeAnn Jepsen's order (the "Order"), granting the fifth and final extension of time to October 5, 2012. See the Order, dated September 6, 2012, attached hereto as **Exhibit A. Respondent further requests a hearing**, pursuant to Section 16(a)(2)(A) of TSCA, 15 U.S.C. 2615(a)(2)(A), and 40 C.F.R. 22.14 of the Consolidated Rules of Practice.

#### **VIII. DEFAULT ORDER**

51. This paragraph cites and refers to federal regulations and administrative law pertaining to default orders, and calls for a legal conclusion. This authority shall speak for itself.

#### **IX. SETTLEMENT CONFERENCE**

52. To the extent that this paragraph refers to federal regulations, federal law, administrative law, and/or EPA policy regarding settlement negotiations, this the authority shall speak for itself.

53. To the extent that this paragraph refers to federal regulations, federal law, administrative law, and/or EPA policy regarding settlement negotiations, this the authority shall speak for itself.

## **X. SPECIAL DEFENSES**

### **First Special Defense (Compliance)**

54. The Respondent fully complied with the Disclosure Rule (as per the federal authority cited by the Complainant in Counts 1-5), and therefore Respondent is not subject to any penalty. In particular, the Respondent asserts the following:

a. As to Count One, the Respondent and/or Respondent's office staff provided all lessees with an EPA-approved lead hazard information pamphlet entitled "Protect Your Family From Lead in Your Home" (the "Pamphlet") upon agreement to lease. Pamphlets were distributed in either English or Spanish, depending on the fluency of the lessee. Lessees acknowledged receipt of the Pamphlet in Subsection D of the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards (the "Lead Disclosure Form").

b. As to Count Two, Respondent and/or Respondent's office staff provided all lessees with a Lead Disclosure Form. Pursuant to Subpart B of the Lead Disclosure Form, Respondent listed and attached all available records and reports pertaining to lead-based paint and/or lead-based paint hazards. The Lead Disclosure Form, which was included or attached to the least contract, was distributed in either English or Spanish, depending on the fluency of the lessee. Lessees acknowledged receipt of the reports and records in Subsection C of the Lead Disclosure Form.

c. As to Count Three, Respondent and/or Respondent's office staff provided all lessees with a Lead Warning Statement. The Lead Warning Statement was prominently displayed in italicized font on the Lead Disclosure Form, which was included or attached to the lease contract. The Lead Warning Statement provided as follows:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead-poisoning prevention.

The Lead Warning Statement, which was included or attached to the lease contract, was distributed in either English or Spanish, depending on the fluency of the lessee.

d. As to Count Four, the Respondent and/or Respondent's office staff provided all lessees with a "Lessor's Disclosure" statement, wherein the Respondent either (a) disclosed the presence of known lead-based paint or lead-based hazards, or (b) indicated no knowledge of the presence of lead-based paint or lead-based hazards (the "Lessor's Disclosure Statement"). The Lessor's Disclosure Statement, which was included or attached to the lease contract, was distributed in either English or Spanish, depending on the fluency of the lessee.

e. As to Count Five, the Respondent and/or Respondent's office staff provided all lessees with a list of records or reports pertaining to lead-based paint or lead-based paint hazards (the "List"). The List was provided in Subsection B of the Lessor's Disclosure of the Lead Disclosure Form. The List, which was included or attached to the lease contract, was written in either English or Spanish, depending on the

fluency of the lessee. The lessee acknowledged receipt of the List and records/reports in Subsection C of the Lead Disclosure Form.

2. Since Respondent complied with all requirements of the Disclosure Rule (as per the federal authority cited in Counts 1-5), no violation transpired and no penalty should be assessed.

**THE RESPONDENT,  
JUAN HERNANDEZ**

By: /s/ Rachel A. Schwartzman

Daniel A. Nagel, Esq.

Rachel A. Schwartzman, Esq.

COHEN AND WOLF, P.C.

1115 Broad Street

Bridgeport, Connecticut 06604

Tel. 203.368.0211

Fax. 203.394.9901

Email: [rschwartzman@cohenandwolf.com](mailto:rschwartzman@cohenandwolf.com)

Email: [dnagel@cohenandwolf.com](mailto:dnagel@cohenandwolf.com)

Juris No. 010032

CERTIFICATION OF SERVICE

I hereby certify that on the date hereof, a copy of the foregoing was served by Fed-Ex Overnight Mail, postage prepaid, upon all counsel and pro se parties of record, as follows:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1  
5 Post Office Square  
Mail Code – ORA18-1  
Boston Massachusetts 02109-3912

Steven Schlang  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Mail Code – ORA18-1  
Boston Massachusetts 02109-3912

/s/ Rachel A. Schwartzman  
Rachel A. Schwartzman

# **EXHIBIT A**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

\_\_\_\_\_  
IN THE MATTER OF: )  
 )  
Juan Hernandez )  
585 East Main Street )  
Bridgeport, CT )  
 )  
RESPONDENT. )  
 )  
\_\_\_\_\_

**Order Granting Fifth Extension  
of Time to File Answer to  
the Complaint**

EPA Docket Number No.  
TSCA-01-2012-0029

**ORDER**

In accordance with 40 C.F.R. §§22.7(b) and 22.16(c), for good cause shown, a fifth and final extension of time for Respondent to file an Answer is granted. The deadline for Respondent to file an Answer to the Complaint is extended to the close of business on Friday, October 5, 2012.

Dated: September 6, 2012

  
\_\_\_\_\_  
LeAnn Jensen  
Acting Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I certify that on this 6<sup>th</sup> day of September, 2012 the original foregoing Order was filed with the Regional Hearing Clerk, a copy was hand-delivered to Counsel for Complainant, and a copy was mailed by certified mail, return receipt requested, to Counsel for Respondent.

September 6, 2012  
Date

Wanda Santiago  
Wanda I. Santiago  
Paralegal/Regional Hearing Clerk  
U.S. EPA Region I  
5 Post Office Square, Suite 100  
Mail code (ORA 18-1)  
Boston, MA 02109-3912

**Respondent:**

Rachel A. Schwartzman  
Cohen and Wolf, P.C.  
1115 Broad Street  
Bridgeport, CT 06604

**Counsel for Complainant:**

Steven Schlang  
Enforcement Counsel  
U.S. EPA Region I  
5 Post Office Square, Suite 100 (Mail Code OES 4-4)  
Boston, MA 02109-3912