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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,

) FIRST AMENDED
) COMPLAINT AND NOTICE OF
) OPPORTUNITY FOR HEARING
)
)

13
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. "Lessor" means any entity that offers target housing for lease, rent or sublease,
14 including but not limited to individuals, partnerships, corporations, trusts, government agencies,
15 housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. § 745.103.

16 8. "Lessee" means any entity that enters into an agreement to lease, rent, or sublease
17 target housing, including but not limited to individuals, partnerships, corporations, trusts,
18 government agencies, housing agencies, Indian tribes, and nonprofit organizations. 40 C.F.R. §
19 745.103.

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

24 10. At all times relevant to this Complaint, the residential properties referenced in
25 Paragraph 9 were "target housing," as that term is defined at 40 C.F.R. § 745.103.

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

Address

Date of Lease

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
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
19)	367 Branch Street, San Luis Obispo, CA	September 7, 2016
20)	1763 Santa Barbara Street #1, San Luis Obispo, CA	August 4, 2016
21)	1763 Santa Barbara Street #2, San Luis Obispo, CA	August 4, 2016
22)	2102 Loomis Street, San Luis Obispo, CA	August 1, 2016
23)	516 Higuera Street, San Luis Obispo, CA	September 7, 2016

III. ALLEGED VIOLATIONS

COUNTS 1-11: Failure to comply with 40 C.F.R. § 107(a)(1)

12. Paragraphs 4 through 11 above are hereby alleged and incorporated by reference as if set forth herein in full.

13. 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).

14. 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).

15. 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.

1 COUNT 12: Failure to comply with 40 C.F.R. § 745.113(b)(2)

2 16. Paragraphs 4 through 11 above are hereby alleged and incorporated by reference as if
3 set forth herein in full.

4 17. 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 18. 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 19. 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 13-35: Failure to comply with 40 C.F.R. § 745.113(b)(3)

19 20. Paragraphs 4 through 11 above are hereby alleged and incorporated by reference as if
20 set forth herein in full.

21 21. 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 22. 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 23. 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 36-58: Failure to comply with 40 C.F.R. § 745.113(b)(4)

9 24. Paragraphs 4 through 11 above are hereby alleged and incorporated by reference as if
10 set forth herein in full.

11 25. 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 26. 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 27. 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 59-78: Failure to comply with 40 C.F.R. § 745.113(b)(5)

26 28. Paragraphs 4 through 11 above are hereby alleged and incorporated by reference as if
27 set forth herein in full.

28 29. 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 30. At the time that Respondent entered into each of the Subject Leases except Subject
6 Leases #10, 14, and 22, Respondent failed to include in the Subject Leases (except Subject
7 Leases #10, 14, and 22), as an attachment or within the contract, statements that the agents have
8 informed the lessors of the lessors' obligations under Section 1018 and the agents are aware of
9 their duties to ensure compliance with the requirements of 40 C.F.R. Part 745, Subpart F, as
10 required by 40 C.F.R. § 745.113(b)(5).

11 31. Respondent's failure to include in the Subject Leases (except Subject Leases #10, 14,
12 and 22), as an attachment or within the contract, statements that the agents have informed the
13 lessors of the lessors' obligations under Section 1018 and the agents are aware of their duties to
14 ensure compliance with the requirements of 40 C.F.R. Part 745, Subpart F at the time of entering
15 into each of the Subject Leases (except Subject Leases #10, 14, and 22) constitutes 20 violations
16 of 40 C.F.R. § 745.113(b)(5) and Section 409 of TSCA, 15 U.S.C. § 2689.

17 COUNTS 79-101: Failure to comply with 40 C.F.R. § 745.113(b)(6)

18 32. Paragraphs 4 through 11 above are hereby alleged and incorporated by reference as if
19 set forth herein in full.

20 33. Each contract to lease target housing shall include, as an attachment or within the
21 contract, the signatures of the lessors, agents, and lessees certifying to the accuracy of their
22 statements to the best of their knowledge, along with the dates of signature. 40 C.F.R. §
23 745.113(b)(6).

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

28 35. Respondent's failures to include in the Subject Leases, as an attachment or within the

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

5 IV. PROPOSED CIVIL PENALTY

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

12 In assessing any civil penalty, Section 16(a) of TSCA requires that EPA take into account
13 the nature, circumstances, extent, and gravity of the violations; Respondent's history of such
14 violations of TSCA; the degree of culpability involved; Respondent's ability to pay a penalty
15 without jeopardizing their ability to continue to do business; and such other factors as justice may
16 require. Accordingly, Complainant requests that after consideration of these statutory assessment
17 factors, the Administrator assess Respondent a civil administrative penalty of up to \$16,000 or
18 \$17,395 (as applicable) for each of the violations of TSCA set forth above.

19 V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

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

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

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

11 The Answer must be filed with:

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

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

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

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

27 VI. INFORMAL SETTLEMENT CONFERENCE

28 EPA encourages all parties against whom a civil penalty is proposed to pursue the
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

1 of settlement. **An informal settlement conference does not, however, affect your obligation**
2 **to file an Answer to this Complaint.**

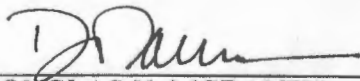
3 **VII. ALTERNATIVE DISPUTE RESOLUTION**

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

8 **VIII. CONSENT AGREEMENT AND FINAL ORDER**

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

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16 Dated at San Francisco, California on this 27 day of November, 2018.

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19 _____
20 DOUGLAS K. MCDANIEL
21 Chief, Waste and Chemical Section
22 Enforcement Division
23 U.S. Environmental Protection Agency, Region IX
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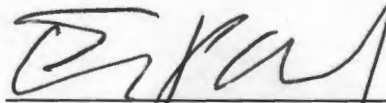
CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing First Amended Complaint and Notice of Opportunity for Hearing was filed with the Headquarters Hearing Clerk and Judge Coughlin via the Office of Administrative Law Judge's E-filing system and by email and First Class Mail to Respondent's counsel at:

Jeffry Radding, Esq.
Attorney at Law
1035 Walnut Street
San Luis Obispo, CA 93401
Radding@msn.com

4/30/18

Date


Edgar P. Coral
Office of Regional Counsel
U.S. EPA, Region IX