

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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| In the Matter of: |) | |
| |) | |
| Aylin, Inc.; Rt. 58 Food Mart, Inc.; |) | Docket No. RCRA-0302-13-0039 |
| Franklin Eagle Mart Corp.; and, |) | |
| Adnan Kiriscioglu, |) | |
| |) | |
| |) | |
| Respondents. |) | |

**RESPONDENTS' OPPOSITION TO COMPLAINANT'S MOTION TO COMPEL
DISCOVERY AND IMPOSE SANCTIONS**

Respondents Aylin, Inc., Rt. 58 Food Mart, Inc., Franklin Eagle Mart Corp. and Adnan Kiriscioglu, through their undersigned counsel of record, submit this opposition to Complainant's Motion to Compel Discovery and Impose Sanctions ("Motion").

As discussed below, Respondents will supplement their original responses to Interrogatories and the Court's March 12, 2014 Discovery Order on September 19, 2014. This supplemental submission will be fully responsive to the information sought by Complainant in Part II (pages 4-5) of its Memorandum of Law in Support of the Motion to Compel Discovery and Impose Sanctions ("Memorandum") accompanying the Motion. Respondents respectfully request that the Court delay acting on Complainant's Motion until after September 19, 2014. After that time, Complainant can withdraw its Motion as moot or the Court can determine that the supplemental submission comports with the Complainant's information request and can deny Complainant's Motion.

In the interest of protecting the Court's time, the Respondents will not respond to the many factual inaccuracies made by the Complainant in its Memorandum. That being said, the Respondents do take exception to the Complainant's assertion on page 2 of its Memorandum that the relationship among the Respondents is "clouded by a myriad of corporate loan transactions and service contracts between the Respondents and other corporate entities controlled by Mr. Kiriscioglu." The discovery responses already provided to the Complainant, as well

as the supplemental submission, clearly document that the use of the word “myriad” by the Complainant is grossly misplaced.¹

The Respondents in their initial response to the Complainant’s discovery request, styled the submission as “partial response.” Complainant acknowledges in its Memorandum that Respondents’ were using a third party – here, their outside accountant – to assemble the additional information.

Respondents’ counsel held a telephone conference earlier today with one of Complainant’s attorneys, indicating that the three corporate Respondents will be filing their 2013 federal tax returns by September 15, 2014, and that these tax returns other financial information needed to establish an “inability to pay” would be submitted to the Court and Complainant on September 19, 2014. Respondents’ counsel is using the four days next week, in part, to Bates stamp and organize the documents for use by the Court and Complainant. Respondents’ counsel indicated to Complainant’s counsel that he would confirm the conversation in writing and would share that writing with the Court. This writing is attached hereto as Exhibit A. Respondents are confident that the supplemental submission to be made on September 19, 2014, will satisfy fully the information sought by Complainant in its Motion and will make the Complainant’s Motion moot.

Accordingly, Respondents respectfully request that the Court delay further consideration of the Motion until after September 19, 2014, to allow Respondents to make their supplemental submission. After September 19, 2014, Complainant can evaluate the supplemental submission and, if appropriate, withdraw its Motion. In the alternative, the Court can review the supplemental submission, can determine that the Respondents have provided the Complainant with the information requested by the Motion and can dismiss the Motion as moot.

Respectfully submitted,



Date: September 10, 2014

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ATTORNEY FOR RESPONDENTS

¹ Respondents also take exception to the Complainant’s assertion in Footnote 1 on page 4 of the Memorandum. The Court was provided with copies of the same documents given to the Complainant in Respondents’ May 6, 2014 partial response.

September 10, 2014

By Electronic Mail

Louis F. Ramalho, Esq.
Janet E. Sharke, Esq.
Jennifer Nearhood, Esq.
U.S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Re: *IMO Aylin, Inc., et al.*
Docket No. RCRA-03-2013-0039

Dear Counsel:

This letter confirms my telephone conversation this morning with Janet concerning the additional financial documents and records the Agency is seeking from the Corporate Respondents under the Motion to Compel, pending before the Court in the above-referenced matter.

The Corporate Respondents will be filing their 2013 tax returns with the Internal Revenue Service on or about September 15, 2014. As a supplemental document exchange under the current orders of the Court, each of the Corporate Respondents will submit to the Court and the Agency on September 19, 2014, the following:

- Federal income tax returns (2009-2013);
- Financial statements for the three most recent fiscal years (including, as applicable, balance sheets, income statements, statements of operations, retained earnings and cash flow);
- General ledgers from January 2009 to the present and chart of accounts;
- Asset depreciation schedule for all assets owned by each entity during the three most recent years;
- Bank statements from January 2009 to present; and,
- EPA's Ability-to-Pay questionnaire.

In addition to the foregoing, the Corporate Respondents will update their response to interrogatories with any financial projections for 2014, and any other information they believe will help the Agency to establish an inability to pay any civil penalty in this matter.

Louis F. Ramalho, Esq.
Janet E. Sharke, Esq.
Jennifer Nearhood, Esq.
September 10, 2014
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In responding to the Agency's Motion to Compel, the Corporate Respondents will ask the Court to defer consideration of the Motion until after September 19, 2014. On the assumption that the financial records are provided to the Court and Agency as set forth above, it is the Respondents' understanding that the Agency will timely withdraw its Motion to Compel.

Sincerely,

A handwritten signature in black ink that reads 'Jeffrey L. Leiter'.

Jeffrey L. Leiter

cc: Sybil Anderson, Headquarters Hearing Clerk
Adnan Kiriscioglu
Ezgi Kiriscioglu

Certificate of Service

I hereby certify that the foregoing Respondents' Opposition to Complainant's Motion to Compel and Impose Sanctions, dated September 10, 2014, was sent this 10th day of September 2014, in the following manner to the addresses listed below.



Jeffrey L. Leiter

Original by Overnight Delivery:

Hon. Christine D. Coughlin
U.S. EPA/Office of Administrative Law Judges
Room M1200
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Original by Overnight Delivery:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA/Office of Administrative Law Judges
Room M1200
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One Copy each by Electronic Mail and Regular Mail:

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