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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

APEX BUILDING COMPANY, INC.,

Defendant.

23 Civ. 7838

COMPLAINT

The United States of America, by and through its attorney Damian Williams, United States Attorney for the Southern District of New York (the “United States”), acting on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”) (together, the “Government”), alleges for its complaint against defendant Apex Building Company, Inc. (“Apex”), as follows:

INTRODUCTION

1. For years, Apex violated lead paint safety regulations across New York City, including during renovations of low-income apartments. Apex failed to take basic, mandatory precautions to prevent lead poisoning in children, other tenants, and workers.

2. Exposure to lead in dust from lead-based paint is the most common cause of lead poisoning. Lead poisoning—particularly in children—can lead to severe, irreversible health problems. Lead exposure can affect children’s brains and developing nervous systems, causing reduced IQ, learning disabilities, and behavioral problems.

3. Apex was hired to conduct renovations in numerous New York City buildings with hundreds of apartments presumed by law to contain lead-based paint. In stripping, knocking down, and taking apart painted surfaces, Apex failed to use mandatory safe work practices, allowing lead dust to be dispersed in the apartments beyond the renovation work area and even into the common areas of buildings where families with children live. Apex and its employees lacked the required certifications and training necessary to perform renovation work while preventing lead dust from contaminating apartments, common areas, and outside spaces. Apex also violated its legal obligation to provide building owners and occupants information about the risks of lead exposure from renovation dust and debris. And Apex failed to keep mandatory records about the renovation work it performed in hundreds of apartments across New York City.

4. EPA informed Apex of violations of lead paint safety regulations—and its legal obligations under the regulations—as early as March 2016. Instead of taking immediate steps to obtain the required certifications, train its workers on lead-safe work practices, and inform building owners and occupants of the risks of lead poisoning during its renovations, Apex provided EPA with inaccurate information about its own certification status, the certifications of its employees, and whether it employed lead safe work practices in the course of its renovations. Indeed, despite being informed of violations of lead paint safety regulations in 2016, Apex continued to violate the regulations through at least August 2021.

5. Addressing Apex’s misconduct is not only a public health necessity but also a matter of environmental justice. The vast majority of the buildings and apartments at issue are low-income housing, in neighborhoods predominantly consisting of low-income families. This population already suffers disproportionately from substantial public health and environmental hazards. Preventing companies like Apex from exposing families to potential lead dust is vital to protecting vulnerable populations.

6. To protect the public health, Congress enacted Title IV of the Toxic Substances Control Act (“TSCA”) and EPA promulgated regulations codified at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair, and Painting Rule” or “RRP Rule”). Apex’s conduct violates TSCA sections 402(c), 406(b), and 407 (15 U.S.C. §§ 2682(c), 2686(b), and 2687) and the RRP Rule.

7. The United States brings this action for an order enjoining Apex from conducting further renovation work until it demonstrates compliance with TSCA and the RRP Rule, compelling Apex to comply with TSCA and the RRP Rule in the future, and requiring Apex to mitigate harm caused by its misconduct.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and Section 17 of TSCA, 15 U.S.C. § 2616.

9. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a) because Apex is incorporated and has its principal place of business in this District, and because Apex violated TSCA and the RRP Rule within this District.

THE PARTIES

10. Plaintiff is the United States of America on behalf of EPA.

11. Defendant Apex is a New York corporation with a registered address in New York, New York, that has performed renovations covered by the RRP Rule at apartment buildings located in this District and elsewhere. Apex is a “firm” performing renovations, as defined in 40 C.F.R. § 745.83.

STATUTORY AND REGULATORY BACKGROUND

12. Lead is toxic. *See* Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851. Ingestion even in small quantities can cause serious health problems, including hypertension, kidney failure, and infertility. *Id.* Children six years old and younger are most vulnerable to the harmful effects of lead. *Id.* Even “at low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems.” *Id.*

13. In 1992, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act of 1992, finding that “low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under age 6, with minority and low-income communities disproportionately affected.” 42 U.S.C. § 4851(a). The statute was intended “to encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction”; “to ensure that the existence of lead-based paint hazards are taken into account in the . . . renovation of homes and apartments”; and “to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.” 42 U.S.C. § 4851a. The Act amended TSCA by adding a new Title IV, entitled “Lead Exposure Reduction,” 15 U.S.C. §§ 2681 *et seq.*

14. In 2008, EPA promulgated the RRP Rule pursuant to TSCA section 402(c), 15 U.S.C. § 2682(c), to reduce the risk of lead exposure during renovation work by establishing

training and certification requirements for renovation companies, mandating lead-safe work practice standards for compensated renovations in most pre-1978 residential buildings, and ensuring that owners and occupants of most pre-1978 residential buildings understand the risks of lead exposure before renovations begin.

15. The RRP Rule applies to renovations performed for compensation in “target housing,” except where the work area has been tested and found to be free of lead. 40 C.F.R. § 745.82. “Target housing” means most housing constructed before 1978, the year in which the federal government first banned consumer use of lead-based paint in residential housing. 40 C.F.R. § 745.103. Housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) and zero-bedroom dwellings are excepted. 15 U.S.C. § 2681(17); 40 C.F.R. § 745.103. Target housing is presumed to contain lead-based paint.

16. Under the RRP Rule, “renovation” is defined as “the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces,” including “the removal of building components (e.g., walls, ceilings, plumbing, windows)” as well as “[t]he removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)).” 40 C.F.R. § 745.83.

17. The RRP Rule contains certification requirements designed to ensure that individuals performing renovations have been trained to minimize lead exposure. Under the RRP Rule, “[f]irms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.” 40 C.F.R. § 745.89(a)(1). “Firms performing renovations”

are responsible for ensuring that the requirements of the RRP Rule are satisfied at all renovation sites. 40 C.F.R. § 745.89(d).

18. Under the RRP Rule, all covered renovations must be performed or directed by at least one “certified renovator” who has successfully completed training in lead-safe work practices from an accredited training provider. 40 C.F.R. §§ 745.81(a)(3), 745.89(d)(2), & 745.90(a). The RRP Rule requires that certified renovators perform or direct critical tasks during the renovation, such as posting warning signs, establishing containment of the work area, and verifying cleanup of the work area after the renovation. 40 C.F.R. § 745.90(b). The RRP Rule further requires that any individual working on a renovation who is not a certified renovator be trained by a certified renovator on lead-safe work practices required by the RRP Rule. 40 C.F.R. §§ 745.81(a)(3) & 745.89(d)(1).

19. The RRP Rule also sets forth safe work-practice requirements designed to contain any lead in dust and debris found in the renovation work area. Under the RRP Rule, “[w]aste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage and disposal.” 40 C.F.R. § 745.85(a)(4)(i). To accomplish this, renovators are required to close off the entire work area by sealing doors, closing windows, and covering air ducts, among other things. 40 C.F.R. §§ 745.85(a)(2). The RRP Rule also requires renovators to “clean the work area until no dust, debris or residue remains” after the renovation has been completed. 40 C.F.R. § 745.85(a)(5).

20. The RRP Rule further requires the provision of safety information designed to inform individuals affected by the renovation work of the risks of lead exposure. Under the RRP Rule, renovators must provide a pamphlet entitled “Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools” (the “Lead Hazard Information

Pamphlet”) to the owner or occupant of applicable housing before renovations begin, and obtain either a written acknowledgment of receipt of the pamphlet from the owner or occupant or a certificate of mailing of the pamphlet. 40 C.F.R. §§ 745.81(b) & 745.84(a) & (b). The “Lead Hazard Information Pamphlet” informs residents of buildings constructed before 1978 of basic facts regarding the effects of lead poisoning as well as precautions residents can take when their homes are being renovated.

21. In particular, the Lead Hazard Information Pamphlet warns property owners and occupants that “[l]ead in dust is the most common way people are exposed to lead, and lead dust is often invisible.” It points out that “[p]rojects that disturb painted surfaces can create dust and endanger you and your family.” And it directs property owners or occupants to “[f]ollow the practices described in th[e] pamphlet to protect you[rself] and your family,” including: “Regularly clean floors, window sills, and other surfaces”; “Wash children’s hands, bottles, pacifiers, and toys often”; and “Wipe off shoes before entering the house.”

22. Renovators must also post signs “clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.” 40 C.F.R. § 745.85(a)(1).

23. Finally, the RRP Rule sets forth recordkeeping requirements to permit EPA to ensure that the public health is being protected. The RRP Rule requires renovators to “retain and, if requested, make available to EPA all records necessary to demonstrate compliance” with the RRP Rule requirements described above. 40 C.F.R. § 745.86(a) & (b). And a firm’s “[f]ailure or refusal to establish and maintain records or to make available or permit access to or copying of records” constitutes a violation of TSCA. 40 C.F.R. § 745.87(b). Among the recordkeeping requirements are the following:

a. 40 C.F.R. § 745.84(a)(1) provides that: “No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must (i) obtain, from the owner, a written acknowledgment that the owner has received the pamphlet or (ii) obtain a certificate of mailing at least 7 days prior to the renovation.”

b. 40 C.F.R. § 745.86(b)(6) provides that certain records must be retained, including: “Documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b).” Required documentation must also include a copy of the certified renovator’s training certificate, and a certification by the certified renovator assigned to the project that “[t]raining was provided to workers” and “[w]arning signs were posted at the entrances to the work area.”

c. 40 C.F.R. § 745.87(b) provides that failure to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of Sections 15 and 409 of TSCA (15 U.S.C. §§ 2614 and 2689).

24. Violation of the RRP Rule is a prohibited act under Section 409 of TSCA, 15 U.S.C. § 2689, and thus constitutes a violation of the statute.

25. Section 17(a) of TSCA, 15 U.S.C. § 2616(a), provides federal district courts with jurisdiction to restrain any violation of Section 409 of TSCA, 15 U.S.C. § 2689.

26. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), imposes liability for civil penalties for violations of section 409, to be assessed by EPA in an administrative proceeding in an amount up to \$46,989 per violation per day for violations occurring after November 2, 2015. 88 Fed. Reg. 989 (Jan. 6, 2023).

27. The United States reserves the right to contend that violations found by the finder of fact in this judicial matter will, under the doctrine of collateral estoppel, control in a future administrative proceeding for civil penalties.

**APEX’S VIOLATIONS OF THE TOXIC SUBSTANCES CONTROL ACT
AND THE RENOVATION, REPAIR, AND PAINTING RULE**

I. Apex Has Renovated Hundreds of Low-Income Apartments Across New York City

28. Between 2015 and 2021, Apex was a general contractor conducting renovation work on several distinct renovation projects in New York City involving multiple residential buildings with hundreds of apartments that were constructed between 1901 and 1936, well before lead-based paint was outlawed by the federal government in 1978. The older the building, the more likely it is to contain lead-based paint. According to the national American Healthy Homes Survey conducted by the U.S. Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control, an estimated 87% of buildings built before 1940 are likely to have lead-based paint.

29. From 2016 until 2017, Apex conducted a renovation at 76 Grove Street in Brooklyn (the “Grove Street Project”). The building was constructed in 1931 and provides affordable housing for low-income individuals and families. According to Apex, the renovation included the demolition of all walls and ceilings, installation of new plumbing, electricity and vents, and the installation of new drywall, in three three-bedroom apartments.

30. From 2016 until 2019, Apex conducted a renovation at 400 Manhattan Avenue in Manhattan (the “Harlem West IV Project”). The building was constructed in 1901, contains 58 apartments, and provides affordable housing for low-income individuals and families. According to the DOB permit for the Harlem West IV Project, the renovation work consisted of “[r]eplacement [of] plumbing lines, heating convectors, electrical fixtures, gas line, [and] install[ation] [of] sheetrock as required for repairs,” in addition to “[m]inor facade repairs, public hall, wall and ceiling repairs.” According to Apex, the firm renovated “various size apartments,” including by performing demolition and removal of walls and floors, as well as window replacements.

31. From 2017 until 2019, Apex conducted a renovation at 1690 Longfellow Avenue and 1700 Longfellow Avenue in the Bronx (the “Longfellow Project”). These buildings were constructed in 1929, together contain 139 apartments, and provide affordable housing for low-income individuals and families. According to the DOB permit for the Longfellow Project, the renovation work included “replacement of kitchen & bathroom fixtures and cabinets, floor and wall tiles in bathrooms and new floor tiles at kitchens,” and required “repairs to existing wood flooring, repair damaged ceilings and walls in bathrooms” and “[r]eplace[ment] [of] apartment entry doors.” According to Apex, the renovation project included renovation of “various size apartments,” including by performing demolition of walls and floors and removal of the resulting debris.

32. From 2018 until at least August 2021, Apex conducted a renovation of three buildings at 353 Ford Street, 355 Ford Street, and 365 Ford Street in the Bronx (the “Twin Parks Project”). The buildings were constructed in 1931, contain 312 apartment units, and provide affordable housing for low-income individuals and families. In fact, this building is owned by the

New York City Housing Authority. According to the DOB permits for the Twin Parks Project and Apex’s description of the scope of work, the renovation work included demolition and removal of the resulting debris, “[i]nterior renovation of existing building, replacement of bathroom fixtures, new finishes and replace[ment] [of] windows.” According to Apex, the Twin Parks Project included renovation of interior apartments (including apartments with one or more bedrooms), corridors, and exterior roofs and façades. The renovations took place while the residents were living inside the apartments being renovated.

33. From 2018 until at least August 2021, Apex conducted a renovation of 14 buildings at 1373 Franklin Avenue, 1377 Franklin Avenue, 1381 Franklin Avenue, 1390 Franklin Avenue, 1392 Franklin Avenue, 1394 Franklin Avenue, 1139 Nelson Avenue, 1144 Nelson Avenue, 1184 Nelson Avenue, 125 West 166th Street, 130 West 166th Street, 134 West 166th Street, 1085 Anderson Avenue, 631 Jefferson Place in the Bronx (the “Highbridge Project”). These 14 buildings were constructed between 1906 and 1936, together contain 311 apartments, and provide affordable housing for low-income individuals and families. In fact, these 14 buildings are owned by the New York City Housing Authority. According to the DOB permits for the Highbridge Project, the renovation work involved “[i]nterior renovation of existing building[s], replacement of bathroom fixtures, new finishes and replacement] [of] windows.” According to the contract for the renovation project, the Highbridge Project included renovations of apartments with one or more bedrooms. According to Apex, in addition to renovating apartment interiors, Apex also renovated building corridors, and exterior roofs and façades. The renovations took place while the residents were living inside the apartments being renovated.

II. Apex Violated the RRP Rule at Its Renovation Projects.

A. A 2016 Inspection Revealed RRP Rule Violations at the Grove Street Project

34. In early 2016, the New York City Department of Health and Mental Hygiene (“DOHMH”) received a complaint of unsafe renovation work practices at the Apex’s Grove Street Project worksite. In response to the complaint, on March 17, 2016, DOHMH conducted an inspection of the worksite and observed “dust on the floors of public hallways” on the first and third floors of the building “from demolition work ongoing in vacant apartments,” indicating that Apex violated the RRP Rule’s requirement that renovation firms “isolate the work area so that no dust or debris leaves the work area while the renovation is being performed” and contain waste from renovation activities “to prevent release of dust and debris” when the firm “transports waste from renovation activities.” 40 C.F.R. §§ 745.85(a)(2), 745.5(a)(4)(iii).

35. The dust left on the public hallway floors contained lead. DOHMH took dust wipe samples of the observed dust for laboratory analysis. Two of those samples revealed lead concentrations of 310 and 170 micrograms per square foot, significantly above the legal threshold in effect at that time of 40 micrograms of lead per square foot of dust permitted under local and federal law.

36. As a result, on April 1, 2016, DOHMH issued an order setting forth its finding that Apex’s “work was improperly generating and dispersing paint chips, debris and dust which contain [lead in excess of acceptable amounts],” noting that “improperly performed work [that] disturbs lead-based paint may expose members of the public, particularly children under six years of age, to risk of lead poisoning,” and requiring Apex to cease work in progress, clean up all dust and debris generated on its worksite, and to ensure future work was done in compliance with lead safe work practices.

37. DOHMH also sent a referral to EPA informing the agency of DOH's findings of "[c]onstruction dust and debris" on public hallways "from demolition work ongoing" at the Grove Street Project worksite.

B. Apex Failed to Comply with Other Aspects of the RRP Rule During the Grove Street Project

38. In addition to the unsafe work practices identified by DOHMH, Apex violated the RRP Rule in numerous other ways during the work performed at 76 Grove Street.

39. As an initial matter, EPA's records demonstrate that Apex violated the RRP Rule by failing to have a firm certification from November 26, 2015, to July 1, 2016, while the Grove Street Project was being performed.

40. Apex also did not have a certified renovator supervising the Grove Street Project. When DOHMH conducted its inspection of the Grove Street Project in March 2016, Apex workers on site identified an individual as the supervisor on the project (the "Apex Supervisor"). Consistent with this, New York City Department of Housing, Preservation, and Development documents relating to the Grove Street Project indicate that the Apex Supervisor was the supervisor at the site. And when the Government interviewed the Apex Supervisor on January 8, 2020, the Apex Supervisor confirmed that he supervised the renovation work for the Grove Street Project. The Apex Supervisor was not at any time certified as a renovator under the RRP Rule.

41. Further, Apex has conceded that its workers did not receive on-the-job lead safety training for the Grove Street Project. Although Apex has argued that such training was not necessary because Apex workers had received EPA abatement certifications pursuant to 40 C.F.R. § 745.226, EPA's *abatement* certifications do not satisfy the RRP Rule requirement that workers receive training for *renovation* work.

42. Finally, while Apex submitted a photograph of a warning sign stating: “Lead Work Area – Poison – No Smoking or Eating” posted at the entrance of 76 Grove Street, Apex did not provide any documentation of warning signs “clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area,” as required under the RRP Rule. 40 C.F.R. § 745.85(a)(1). Apex further acknowledged that it did not provide a Lead Hazard Information Pamphlet to the owner or occupants of 76 Grove Street before beginning the Grove Street Project.

C. Apex Submitted Inaccurate Records and Information to EPA Regarding the Grove Street Project

43. On May 1, 2016, EPA sent an information request letter to Apex seeking information about the work performed at 76 Grove Street.

44. Apex submitted a response on May 20, 2016, along with an affidavit of completeness and accuracy sworn by Apex’s President and Chief Operating Officer (“Apex’s President”), which inaccurately represented Apex’s certification status during the Grove Street Project.

45. Specifically, Apex’s President stated that Apex was a certified renovation firm and attached a document purporting to be a ten-year RRP Rule certification issued by EPA on March 21, 2006. However, Apex was not in fact certified as a renovation firm during the Grove Street Project. Apex had last been certified on November 15, 2010, and its certification expired by November 26, 2015. Apex did not obtain a new RRP Rule certification until July 1, 2016.

46. The purported RRP Rule firm certification submitted by Apex was not genuine. On its face, it purported to be issued in 2006, four years before EPA first issued RRP certifications. The certification number on the document—NAT-13791-1—appears to have been taken from an

abatement certification that Apex received on March 21, 2006, which bore certification number NY-13971-1. The term of the purported RRP certification—10 years—is unavailable for RRP Rule certifications. 40 C.F.R. § 745.89(a)(2)(i).

47. Apex also submitted a cover letter purportedly authored by EPA in connection with the purported March 21, 2006 RRP Rule certification. But this letter, too, was not genuine. The cover letter appears to have derived from a letter sent in connection with Apex’s 2006 *abatement* certification. It stated that the certification would expire on April 3, 2009 (the date that Apex’s *abatement* certification in fact expired), rather than the date in 2016 expiration date on the face of the purported RRP Rule certification. The letter also included an application number that corresponded to Apex’s *abatement* certification application. At the same time, the cover letter included the name of an EPA employee whose employment with EPA did not commence until over six years after the date of the letter, in mid-2012.

48. Beyond the issue of firm certification, after first claiming that Apex was not required to assign a certified renovator to the Grove Street Project, on December 10, 2019, Apex represented to EPA that it had “reviewed its records to find whether any of its employees or consultants had a renovator certificate for the relevant period” and that it had determined that the brother of Apex’s President was a certified renovator who “was an employee of Apex until 2014 and thereafter assisted periodically as a consultant.” Apex later submitted affidavits stating that this individual had been assigned as the certified renovator for the Grove Street Project. But Apex had previously provided EPA a list of individuals present at the site that did not include the brother; Apex workers at the site had told DOHMH that another individual (the Assigned Supervisor) was the supervisor; and the Assigned Supervisor has confirmed to the government that he was the

supervisor at the site and that if the brother had been present, it would only have been as an ordinary laborer, not a supervisor.

D. Apex Failed to Comply with the RRP Rule During the Harlem West IV, Longfellow, Twin Parks, and Highbridge Projects

49. In June and August 2021, the Government requested information regarding Apex renovation projects completed by Apex after 2018 or in progress at the time of the request. In response Apex provided limited information regarding several renovation projects, including the Harlem West IV Project, the Longfellow Project, the Twin Parks Project, and the Highbridge Project.

50. Even though EPA had informed Apex of potential RRP Rule violations at the Grove Street Project—and of Apex’s obligations under the RRP Rule more generally— in 2016, Apex continued to violate the RRP Rule in these subsequent renovation projects, including by failing to assign certified renovators to its renovation projects.

51. Apex has represented to the Government that it assigned two particular individuals to supervise the Harlem West IV and Longfellow Projects. Neither individual was a certified renovator at the for the bulk of the Harlem West IV and Longfellow Projects; one individual received a RRP Certification near the completion of these multi-year projects. Thus, Apex failed to assign a certified renovator to direct the renovation work at the Harlem West IV and Longfellow Projects for the vast majority of the duration of those projects.

52. With respect to Highbridge Project and the Twin Parks Project, Apex identified one individual who did have a certified renovator certification during the period the projects actually took place. However, Apex did not retain the documentation required by the RRP Rule to show that that individual was in fact assigned to direct those projects. Moreover, the Highbridge Project

and the Twin Parks Project both took place at the same time (between 2018 and 2021) and together involve large-scale renovations. Even if this certified renovator were in fact assigned to the jobs, the scope of the projects was such that one individual could not have performed all the duties of the certified renovator: to “regularly direct work being performed by other individuals to ensure that the work practices required [under the RRP Rule] are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area”; to “be physically present at the work site when the signs required by [the RRP Rule] are posted, while the work area containment required by [the RRP Rule] is being established, and while the work area cleaning required by [the RRP Rule] is performed”; and to “perform a visual inspection to determine whether dust, debris or residue is still present” after clean-up, among other tasks, across 15 buildings and more than 600 apartments, 40 C.F.R. §§ 745.90(b), 45.85(b).

53. Apex also represented in response to the Government’s 2021 requests that it provided on-the-job training on lead-safe work practices on the Harlem West IV, Longfellow, Twin Parks, and Highbridge Projects. However, Apex acknowledged that it did not have any of the documentation it is required by law to maintain to demonstrate that Apex actually did perform on-the-job training on lead-safe work practices for Apex workers. Further, on-the-job training can only be performed by a certified renovator, 40 C.F.R. §§ 745.89(d), 745.90. Therefore, on-the-job training could not have been provided for these renovation projects when they lacked certified renovators.

54. Finally, in response to the Government’s 2021 requests, Apex conceded that it did not have documentary evidence showing that it provided the required Lead Hazard Information Pamphlets to the owners or occupants of any of the five projects at issue. It similarly

acknowledged that it did not have documentary records showing that it posted any warning or informational signs at any of the renovation projects at issue.

III. Apex's Conduct Risks Harm to the Public

55. Apex has performed renovation work in New York City housing without EPA certification for either the firm itself or for the renovators directing the renovation work on the projects. The results of inspections of Apex's Grove Street Project confirm that Apex has violated the RRP Rule's lead-safe work practices in buildings that contain lead-based paint.

56. Even after EPA confronted Apex with the results of the 2016 DOHMH inspection of the Grove Street Project and informed Apex of its obligations under TSCA and the RRP Rule, Apex's RRP violations persisted, as Apex continued to fail to assign certified renovators to ensure that lead-safe work practices are followed in the course of its renovations, failed to warn owners and occupants of the dangers of lead poisoning, and failed to maintain required documentation regarding compliance with the RRP Rule.

57. Apex's violations of the RRP Rule pose a serious risk of harm. Apex performs renovation work in old residential buildings throughout New York City, which are highly likely to contain lead-based paint. In fact, several of the buildings renovated by Apex—76 Grove Street, 1690 Longfellow Avenue, and several Highbridge Project buildings—are known to contain lead-based paint.

58. Accordingly, Apex's failure to employ lead-safe work practices to contain toxic lead dust and its failure to inform building owners and occupants of potential lead hazards present significant risks of lead poisoning to individuals—particularly children—living in apartments and homes neighboring its worksites. Apex's failure to ensure that its worksites are supervised by a certified renovator—with the training and skill to properly train workers on lead-safe work

practices—similarly presents significant health risks to neighbors and workers who are exposed to dust and debris potentially containing lead. In particular, workers exposed to lead dust can carry that dust home on their clothing and expose their families. And Apex’s failure to maintain and provide to EPA records of their compliance with the RRP Rule has hampered EPA’s ability to enforce TSCA and the RRP Rule to protect public safety.

59. The renovation projects performed by Apex raise significant environmental justice concerns. These renovations occurred at many residential properties located in areas where overburdened or underserved populations live. These families and individuals are already disproportionately burdened by other environmental problems, including proximity to Superfund sites, hazardous waste, and respiratory hazards.

FIRST CLAIM FOR RELIEF

**Violations of TSCA and the RRP Rule:
Failure to Obtain Firm Certification
(15 U.S.C. § 2689; 40 C.F.R. §§ 745.89(a)(1) & 745.89(a)(2)(ii))**

60. The United States restates the allegations of paragraphs 1 to 59, above.

61. The RRP Rule requires firms to obtain a valid RRP firm certification prior to performing renovation work on target housing. 40 C.F.R. §§ 745.89(a)(1) and 745.81(a)(2)(ii).

62. Apex performed renovation work on target housing without an EPA RRP firm certification between November 26, 2015, and July 1, 2016, in violation of 40 C.F.R. §§ 745.89(a)(1) and 745.81(a)(2)(ii) and 15 U.S.C. § 2689.

63. According to Apex, the Grove Street Project began in February 2016 and ended in July 2016.

64. Apex did not have the required RRP Rule firm certification for the entire period of the Grove Street Project.

65. Apex's violations of the RRP Rule's certification requirement threatened irreparable harm irreparable harm to the health and safety of residents, neighbors, visitors, passers-by, and workers. They likewise threatened irreparable harm to the United States' interest in protecting the public from the harmful effects of lead exposure.

66. Pursuant to Sections 17 and 409 of TSCA, 15 U.S.C. §§ 2616 and 2689, the Court should issue an order (i) restraining Apex from conducting any renovation work on target housing without compliance with TSCA and the RRP Rule, (ii) enjoining Apex to perform all future renovation work on target housing in compliance with TSCA and the RRP Rule, (iii) requiring Apex to mitigate the harms resulting from its violations of TSCA and the RRP Rule, and (iv) providing other available equitable remedies.

SECOND CLAIM FOR RELIEF

Violations of TSCA and the RRP Rule: Failure to Use Certified Renovators and Ensure Proper Training (15 U.S.C. § 2689; 40 C.F.R. §§ 745.81(a)(3), 745.89(d)(1), and 745.89(d)(2))

67. The United States restates the allegations of paragraphs 1 to 66, above.

68. The RRP Rule requires that a renovation firm assign a certified renovator to renovation work on target housing and that the certified renovator provide on-the-job training to any employees not trained as a certified renovator. 40 C.F.R. §§ 745.81(a)(3), 745.89(d)(1), and 745.89(d)(2).

69. Apex has repeatedly violated the certified renovator and on-the-job training requirements of the RRP Rule. The failure to assign a certified renovator necessarily constitutes a failure to provide on-the-job training. Further, Apex acknowledged that it did not have any of the documentation it is required by law to maintain to demonstrate that Apex performed on-the-job training on lead-safe work practices for Apex workers.

70. Apex's violations of the RRP Rule's certification and training requirements threaten irreparable harm irreparable harm to the health and safety of residents, neighbors, visitors, passers-by, and workers. These activities likewise threaten irreparable harm to the United States' interest in protecting the public from the harmful effects of lead exposure.

71. Pursuant to Sections 17 and 409 of TSCA, 15 U.S.C. §§ 2616 and 2689, the Court should issue an order (i) restraining Apex from conducting any further renovation work on target housing until it can demonstrate compliance with TSCA and the RRP Rule, (ii) enjoining Apex to perform all future renovation work on target housing in compliance with TSCA and the RRP Rule, (iii) requiring Apex to mitigate the harms resulting from its violations of TSCA and the RRP Rule, and (iv) providing other available equitable remedies.

THIRD CLAIM FOR RELIEF

Violations of TSCA and the RRP Rule: Failure to Comply with Lead-Safe Work Practice Requirements (15 U.S.C. § 2689; 40 C.F.R. §§ 745.85(a) and 745.89(d)(3))

72. The United States restates the allegations of paragraphs 1 to 71, above.

73. The RRP Rule requires that renovation firms ensure that all renovations are performed in accordance with mandatory lead-safe work practice standards. In particular, firms must “[c]lose windows and doors in the work area,” maintain “[d]oors . . . covered with plastic sheeting or other impermeable materials,” and “contain the waste to prevent release of dust and debris” when transporting waste from renovation activities, 40 C.F.R. § 745.85(a)(2)(i)(C), 745.85(a)(4)(iii), to ensure that “[w]aste from renovation activities . . . [is] contained to prevent releases of dust and debris before the waste is removed from the work area for storage and disposal,” 40 C.F.R. § 745.85(a)(4)(i).

74. Apex failed to employ lead safe work practices in its renovation projects. In particular, Apex failed to employ lead-safe work practices at the Grove Street Project by failing to contain dust and debris—which tested positive for lead—from the ongoing renovation work. And Apex’s failure to assign certified renovators and provide on-the-job training on lead-safe work practices for the other projects further indicate that Apex failed to employ lead safe work practices in other projects at issue.

75. Apex’s violation of the RRP Rule’s lead-safe work practice requirements threaten irreparable harm to the health and safety of residents, neighbors, visitors, passers-by, and workers. These activities likewise threaten irreparable harm to the United States’ interest in protecting the public from the harmful effects of lead exposure.

76. Pursuant to Sections 17 and 409 of TSCA, 15 U.S.C. §§ 2616 and 2689, the Court should issue an order (i) restraining Apex from conducting any further renovation work on target housing until it can demonstrate compliance with TSCA and the RRP Rule, (ii) enjoining Apex to perform all future renovation work on target housing in compliance with TSCA and the RRP Rule, (iii) requiring Apex to mitigate the harms resulting from its violations of TSCA and the RRP Rule, and (iv) providing other available equitable remedies.

FOURTH CLAIM FOR RELIEF

**Violations of TSCA and the RRP Rule:
Failure to Provide Lead Hazard Information Pamphlets and Post
Warning and Informational Signs
(15 U.S.C. § 2689; 40 C.F.R. §§ 745.84(a), 745.84(b), 745.85(a)(1))**

77. The United States restates the allegations of paragraphs 1 to 76, above.

78. The RRP Rule requires that “[n]o more than 60 days before beginning renovation activities in any residential dwelling unit of target housing,” the firm performing the renovation

must “[p]rovide the owner [or occupant] of the unit with the” Lead Hazard Information Pamphlet and obtain “a written acknowledgment that the owner has received the pamphlet.” 40 C.F.R. § 745.84(a) & (b).

79. The RRP Rule further requires that renovation firms like Apex post signs “clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.” 40 C.F.R. § 745.85(a). With respect to renovations of common areas, renovation firms must also “post informational signs describing the general nature and locations of the renovation and the anticipated completion date” which “must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants.” 40 C.F.R. § 745.84(b)(2)(ii).

80. Apex systematically failed to provide the Lead Hazard Information Pamphlet to the owners or occupants of the buildings it renovated, and it failed to post appropriate warning and informational signs at renovation worksites.

81. Apex’s violations of the RRP Rule’s Lead Hazard Information Pamphlet and warning and informational sign requirements threaten irreparable harm to the health and safety of residents, building visitors, and workers. These activities likewise threaten irreparable harm to the United States’ interest in protecting the public from the harmful effects of lead exposure.

82. Pursuant to Sections 17 and 409 of TSCA, 15 U.S.C. §§ 2616 and 2689, the Court should issue an order (i) restraining Apex from conducting any further renovation work on target housing until it can demonstrate compliance with TSCA and the RRP Rule, (ii) enjoining Apex to perform all future renovation work on target housing in compliance with TSCA and the RRP Rule,

(iii) requiring Apex to mitigate the harms resulting from its violations of TSCA and the RRP Rule, and (iv) providing other available equitable remedies.

FIFTH CLAIM FOR RELIEF

**Violations of TSCA and the RRP Rule:
Failure to Establish, Maintain, Retain, and Make Available Records
Demonstrating Compliance with the RRP Rule
(15 U.S.C. § 2689; 40 C.F.R. §§ 745.86(a) and 745.87(b))**

83. The United States restates the allegations in paragraphs 1 to 84 above.

84. The RRP Rule requires that “[f]irms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation.” 40 C.F.R. § 745.86(a). Among those records that must be retained are: (1) “Signed and dated acknowledgments of receipt” of the Lead Hazard Information Pamphlet, 40 C.F.R. § 745.86(b)(2); (2) “Documentation . . . that a certified renovator was assigned to the project” and “provided on-the-job training for workers used on the project,” 40 C.F.R. § 745.86(b)(6); and (3) “[C]ertification by the certified renovator assigned to the project that . . . [w]arning signs were posted at the entrances to the work area,” 40 C.F.R. § 745.86(b)(6)(ii). “Failure or refusal to establish and maintain records or to make available or permit access to or copying of records” is a violation of TSCA. 40 C.F.R. § 745.87(b).

85. Apex has failed to maintain legally mandated records at renovation projects that took place between 2015 and 2021.

86. Additionally, Apex maintained and provided inaccurate information and inauthentic documentation to EPA as described above.

87. Apex’s violations of the RRP Rule’s recordkeeping requirements have hampered EPA’s ability to monitor Apex’s compliance with TSCA and the RRP Rule, threatening irreparable

harm to the health and safety of people living in or near buildings Apex renovates, visitors to these buildings, and to the untrained workers involved in these renovations. These activities likewise threaten irreparable harm to the United States' interest in protecting the public from the harmful effects of lead exposure.

88. Pursuant to Sections 17 and 409 of TSCA, 15 U.S.C. §§ 2616 and 2689, the Court should issue an order (i) restraining Apex from conducting any further renovation work on target housing until it can demonstrate compliance with TSCA and the RRP Rule, (ii) enjoining Apex to perform all future renovation work on target housing in compliance with TSCA and the RRP Rule, (iii) requiring Apex to mitigate the harms resulting from its violations of TSCA and the RRP Rule, and (iv) providing other available equitable remedies.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court:

- i. Enter judgment against Apex and in favor of the United States for the violations alleged in this complaint;
- ii. Enter an order immediately restraining Apex from performing any renovation work until it can demonstrate compliance with TSCA and the RRP Rule;
- iii. Enter a permanent injunction compelling Apex to comply with TSCA and the RRP Rule;
- iv. Order Apex to mitigate the harms resulting from its conduct;
- v. Order Apex to provide EPA with all previously requested information and promptly provide any additional information requested; and

vi. Grant such other and further equitable and other relief as the Court deems just and appropriate.

Date: September 5, 2023
New York, New York

Respectfully submitted,

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