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BEFORE THE OREGON PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION OF OREGON,

Complainant,

v.

VCI COMPANY f/k/a STAN EFFERDING and STANLEY JOHNSON d/b/a VILAIRE, and VCI COMPANY, a Washington corporation,

Defendant.

Docket No. UM1288

ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

In answer to complainant's allegations in its Complaint, defendants respond as follows:

1.

Defendants admit the substance of paragraph 1 of the Complaint, but denies the characterization of the findings in the PUC audits. Such audits speak for themselves.

2.

Defendants deny the allegations in paragraph 2 of the Complaint.

3.

Defendants admit the procedural facts in paragraph 3 of the Complaint, but deny that it received overpayments from the Commission.

4.

Defendants admit the facts in paragraph 4 of the Complaint.

5.

Defendants admit the facts in paragraph 5 of the Complaint.

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6.

Defendants admit the facts in paragraph 6 of the Complaint.

7.

Defendants admit the facts in paragraph 7 of the Complaint.

8.

Defendants admit the facts in paragraph 8 of the Complaint.

9.

The allegations in paragraph 9 of the Complaint are merely quotations of Oregon Revised Statutes and Oregon Administrative Rules. These statutes and rules speak for themselves and their interpretation is purely a question of law.

10.

Defendants deny that it has only a ten-day period to answer the Complaint. Defendants deny that VCI Company, or any of them, have been overpaid by \$203,391.97. Defendants' Answer is filed pursuant to Commission rules, including but not limited to OAR 860-013-0025, OAR 860-013-0050, and OAR 860-013-0065.

11.

To the extent not specifically admitted above, defendants deny each and every remaining allegation in complainant's Complaint.

FIRST AFFIRMATIVE DEFENSE

(Violation of Due Process)

12.

It appears that this proceeding has involved extensive and improper *ex parte* communications and advocacy without notice to defendants, without opportunity for defendants to be heard and outside the public process, all of which has resulted in depriving defendants of their right to a fair and unbiased adjudication of the claims subject to this Complaint. The extent of the due process violations has apparently so tainted this proceeding that the only remedy for

1 such violations is dismissal of all claims against defendants.

2 **SECOND AFFIRMATIVE DEFENSE**

3 (Damages Speculative)

4 13.

5 The complainant acknowledges that the amounts claimed are based on a statistical
6 sampling and that the conclusion is merely an estimate. Complainant's damages are speculative
7 and unreliable and do not support its claim.

8 **THIRD AFFIRMATIVE DEFENSE**

9 (Contributory Fault/Alternative Causation)

10 14.

11 The complainant, through the OTAP program, directed VCI Company on when and how
12 requests for reimbursements were appropriate. VCI Company followed complainant's directions
13 and to the extent complainant believes now it has overpaid VCI Company, it did so of its own
14 accord and under its own interpretation of its rules and agreements. To the extent complainant
15 claims to be damaged, it is the result of its own actions and not the actions of defendants.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 (Failure to State a Claim Piercing of the Corporate Vail)

18 15.

19 To the extent that complainant's complaint seeks to impose personal liability for the
20 amounts claimed on the individuals Stan Efferding and Stanley Johnson, complainant has failed
21 to state a claim against these persons individually and has failed to state any basis to pierce the
22 corporate vail of VCI Company, a Washington corporation.

23 **CONTERCLAIM**

24 (By VCI Company for Breach of Contract)

25 16.

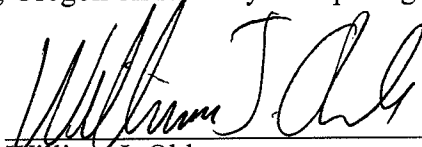
26 On or about September 2006, complainant reduced VCI Company's reimbursement

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of October 2007, I served the foregoing ANSWER on the following party at the following address:

David B. Hatton
Assistant Attorney General
1162 Court Street NE
Salem, OR 97301-4096
David.Hatton@state.or.us

by electronic filing, emailing and mailing to him a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to him at the address set forth above, and deposited in the U.S. Post Office at Portland, Oregon on said day with postage prepaid.



William J. Ohle