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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105**

_____)	
In the Matter of:)	Docket No. FIFRA-09-2022-0076
)	
Ejam, Inc.,)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.)	
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Ejam, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “the Act”), 7 U.S.C. § 136l(a)(1), for the assessment of a civil administrative penalty against Respondent for violation of Section 12 of the Act, 7 U.S.C. § 136j.
2. Complainant is the Manager of the Toxics Section of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a Delaware corporation with a business located at 1501 Quail Street, Suite 110, in Newport Beach, California.

B. STATUTORY AND REGULATORY BACKGROUND

4. Section 17(c) of FIFRA, 7 U.S.C. § 136o(c) and the regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticidal devices into the United States.
5. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

6. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines the term “device” to mean “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.”

7. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other living micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

8. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines the term “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” Section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), defines the term “labeling” as “all labels and all other written, printed, or graphic matter . . . accompanying the pesticide or device at any time”

9. Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), provides that a pesticide is “misbranded” if “(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular . . . or (D) its label does not bear the registration number assigned under section 7 to each establishment in which it was produced.”

10. 40 C.F.R. 152.500(b) states that “[a] device is subject to the requirements set forth in: (1) FIFRA sec. 2(q)(1) and part 156 of this chapter, with respect to labeling” and “(2) FIFRA

sec. 7 and part 167 of this chapter, with respect to establishment registration and reporting.”

11. 40 C.F.R. § 156.10(a)(5) states, in pertinent part, that “[p]ursuant to section 2(q)(1)(A) of the Act, a pesticide or a device declared subject to the Act pursuant to § 152.500, is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Examples of statements or representations in the labeling which constitute misbranding include: (ix) [c]laims as to the safety of the pesticide or its ingredients, including statements such as ‘safe’ . . . or ‘nontoxic to humans and pets’ with or without such a qualifying phrase as ‘when used as directed.’”

12. 40 C.F.R. § 156.10(a)(1)(v) provides that “Every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently . . . [t]he producing establishment number as prescribed in paragraph (f) of this section.”

13. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), further defines the term “misbranded” to mean, in pertinent part, a device that lacks a label bearing the name and address of the producer, registrant, or person for whom produced; and the name, brand, or trademark under which the pesticide is sold.

14. 40 C.F.R. § 156.10(a)(1)(ii) provides that “Every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently . . . [t]he name and address of the producer, registrant, or person for whom produced as described in paragraph (c) of this section.”

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the phrase “to distribute or sell” to mean “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or

offer to deliver.”

16. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), provides that it shall be unlawful for any person in any State to distribute or sell to any person any device which is misbranded.

17. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of the Act may be assessed a civil penalty of not more than \$21,805 for each violation that occurs after November 2, 2015 and is assessed on or after January 12, 2022. *See* Section 14(a)(1) of the Act, 7 U.S.C. § 136l(a)(1), as amended by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, at 87 Fed. Reg. 1676 (January 12, 2022).

C. ALLEGED VIOLATIONS

18. Respondent is a “person,” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. For the shipment of devices relevant to this CAFO, Respondent is the importer of record.

20. On or about May 27, 2020, Respondent imported one (1) shipment of the product, “Pest Defender,” associated with Entry Number WDN-41437725 that entered into the United States at the Port of Los Angeles, California from China.

21. As the importer of the shipment of the product, “Pest Defender,” above and by doing business in the United States, Respondent is subject to the requirements of FIFRA and its implementing regulations.

22. At all times relevant to this Consent Agreement, the label on the product, “Pest Defender,” in the shipment stated that the product provides “[E]lectronic pest control.” The

label also included drawings of insects and a rodent, each of which is covered by the universal “no” symbol (a red circle that is bisected by a diagonally positioned red line).

23. Based on the images and the claim on its label, “Pest Defender” is a “device” pursuant to Section 2(h) of FIFRA, 7 U.S.C. § 136(h), and 40 C.F.R. § 152.500(a).

24. At all times relevant to this Consent Agreement, the label for the device, “Pest Defender,” stated the claims that the device was “Safe for the family,” and “Safe around people and pets.”

25. At all times relevant to this Consent Agreement, the label for the device, “Pest Defender,” did not contain a registration number assigned under section 7 of the Act to an establishment in which the device was produced.

26. At all times relevant to this Consent Agreement, the label for the device, “Pest Defender,” did not display the address of the producer or person for whom it was produced.

27. Based on the claims that the device was “Safe for the family,” and “Safe around people and pets” and the lack of an establishment registration number and the address of the producer or person for whom it was produced on the label, the device, “Pest Defender,” was “misbranded” pursuant to Sections 2(q)(1)(A) and (D) and 2(q)(2)(C) of FIFRA, 7 U.S.C. §§ 136(q)(1)(A) and (D) and 136(q)(2)(C), 40 C.F.R. §§ 152.500(b)(1) and (2), and 40 C.F.R. §§ 156.10(a)(1)(v), (a)(1)(ii), and (a)(5)(ix).

28. Respondent’s importation of the shipment of the device, “Pest Defender,” on or about May 27, 2020 is a “distribution or sale” of the device pursuant to Section 2 (gg) of FIFRA, 7 U.S.C. § 136(gg).

29. Consequently, Respondent’s importation of the shipment of the device, “Pest Defender,” through the Port of Los Angeles, California on or around May 27, 2020 constitutes

one (1) violation of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), which provides that it is unlawful for any person to distribute or sell to any person a device that is misbranded.

D. RESPONDENT'S ADMISSIONS

30. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations set forth in Section I.C of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

31. Respondent agrees to the assessment of a penalty in the amount of THREE THOUSAND, EIGHT HUNDRED DOLLARS (\$3,800) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C of this CAFO.

32. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date in this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

- a. Respondent may pay online through the Department of the Treasury website at www.pay.gov. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments – Cincinnati Finance Center, and complete the SFO Form Number 1.1.
- b. Respondent may also pay the civil penalty using any method, or combination of

methods, provided on the following website:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>

33. If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
R9HearingClerk@epa.gov

Nathan Dancher
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX
Dancher.Nathan@epa.gov

34. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

35. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 31, then Respondent shall pay to EPA the stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 32 may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate

United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

- b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 35. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. §

13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. CERTIFICATION OF COMPLIANCE

36. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with any FIFRA requirements that may apply to its ongoing operations.

G. RETENTION OF RIGHTS

37. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.

38. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEY'S FEES AND COSTS

39. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this Proceeding.

I. EFFECTIVE DATE

40. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

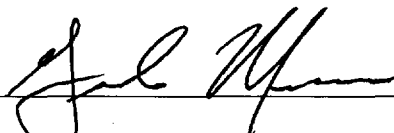
41. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

42. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, EJAM, INC.

August 2, 2022

DATE



Giancarlo Maniaci, President

Ejam, Inc.

FOR COMPLAINANT, EPA REGION IX:

8/22/2022

DATE

MATTHEW SALAZAR Digitally signed by
MATTHEW SALAZAR
Date: 2022.08.22
15:54:31 -07'00'

Matthew Salazar, PE
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

