## FILED

1	NANCY J. MARVEL		
2	Regional Counsel		2012 SEP 26 AM 9: 59
3			
4	Margaret Alkon		U.S. EPA. REGION IX REGIONAL HEARING CLERK
5	Assistant Regional Counsel		WEGIOUSE HEXIMO CECKN
6	U.S. Environmental Protection Agend	су	
7	Region IX 75 Hawthorne Street		
8 9	San Francisco, CA 94105		
10	(415) 972-3890		
11	(113) 772 3070		
12		UNITED STATES	
13	ENVIRONMENTAL PROTECTION AGENCY		
14		REGION IX	
15	75 1	HAWTHORNE STREET	
16	SAN	FRANCISCO, CA 94105	
17			
18	In the matter of:	Docket No. FIFRA-09-20	•
19	Omni Bassash Garasatian	) CONSENT AGREEME	.NT
20	Omni Research Corporation d/b/a Bio-Dex Laboratories	) and	
<b>2</b> 1 <b>2</b> 2		<ul><li>) FINAL ORDER PURSU</li><li>) SECTIONS 22.13 AND</li></ul>	
23	Respondent.	SECTIONS 22.13 AND	22.18
24		)	
25			
26	I. C	ONSENT AGREEMENT	
		-	
27	Complainant, the Director of	the Communities and Ecosystems	Division, United States
28	Environmental Protection Agency, R	egion 9, ("EPA") and Responden	t Omni Research
29	Corporation doing business as Bio-D	ev Lahoratories (haraafter "Desna	andant") anak ta sattla thia
2. 3	corporation doing business as Bio-Di	ex Laboratories (hereafter Respe	mucht ) seek to settle this
30	case and consent to the entry of this (	Consent Agreement and Final Ord	ler ("CAFO").
	,		( 0111 0 ).
31	<u>A. APPLICABI</u>	<u>E STATUTES AND REGULA</u>	TIONS
		·-	
32	This administrative procee	ding is initiated pursuant to Secti	on 14(a) of the Federal
		1 4 4 711 5 5 6 426 4 4	
33	Insecticide, Fungicide, and Rodentici	de Act, 7 U.S.C. § 136, <u>et seq</u> . (h	ereinafter referred to as
34	"FIFD A" or the "Act") and the Cons	olidated Pulsa of Practice Govern	dus the Administrative
J4	"FIFRA" or the "Act"), and the Cons	ondated Rules of Fractice Govern	ang me Administrative
35	Assessment of Civil Penalties, 40 C.I	F.R. Part 22.	
-	,	· <del></del>	

2

3

4 5

6 7

8

9 10

11

12

13 14

15

16

17

18

19

21

20

22

23

## **B. AUTHORITY AND PARTIES**

- 2. Respondent is an Arizona corporation. Respondent sold or distributed a product labeled "Knock Out Water Treatment" (hereafter "Knock Out"). Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
- 3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136 l(a), is vested in the Administrator of EPA ("Administrator"). By EPA Delegation Order Number 5-14, dated May 11, 1994, the Administrator delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. By EPA Regional Order Number 1255.08 dated June 9, 2005, the Regional Administrator of EPA Region IX redelegated this authority to the Director and the Associate Director of the Communities and Ecosystems Division. The Associate Director of the Communities and Ecosystems Division has the authority to commence and settle an enforcement action in this matter.
- 4. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell to any person any pesticide that is not registered under section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter.
- 5. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) states that the term "to distribute or sell" means 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.

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

#### C. COMPLAINANT'S ALLEGATIONS

8. Complainant alleges: Respondent distributed or sold Knock Out to various persons for use in swimming pools. Knock Out contains 98.5% sodium bromide. At the times relevant to this Complaint, the label of Knock Out stated "KNOCKS OUT A BROAD RANGE OF WATER PROBLEMS ASSOCIATED WITH ALGAE INCLUDING YELLOW, GREEN, PINK AND CLEAR COLORS." A statement that a product knocks out water problems associated with algae is a pesticidal claim. At the times relevant to this enforcement action, Knock Out is a pesticide. Knock Out is not a registered pesticide. Respondent distributed or sold Knock Out in ninety two (92) transactions between June 8, 2010 and June 6, 2011. These distributions and sales involved fifty nine (59) distributions of 1 pound containers, twenty seven (27) distributions of two pound containers, two (2) distributions of twenty five pound containers, and four (4) distributions of fifty pound containers. For each of the ninety two distributions and sales, Respondent violated section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered product, Knock Out.

### 1 D. RESPONDENT'S ADMISSIONS 9. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, 2 Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over 3 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section 4 5 I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO. (iv) agrees to 6 pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO; 7 and (vi) waives the right to appeal the proposed final order contained in this CAFO. 8 9 E. CIVIL ADMINISTRATIVE PENALTY 10. Respondent consents to the assessment of a penalty in the amount of SIXTY EIGHT 10 THOUSAND SIX HUNDRED FORTY DOLLARS (\$68,640) as final settlement and complete 11 satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C. of 12 13 the CAFO and under the Act, as alleged in Section I.C. of the CAFO. Respondent shall pay this civil penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be 14 15 paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the 16 17 other methods listed below) and sent as follows: 18 Regular Mail: U.S. Environmental Protection Agency 19 Fines and Penalties 20 Cincinnati Finance Center 21 PO Box 979077 22 St. Louis, MO 63197-9000 23 24 25

262728

1	Wire Transfers:
2	Wire transfers must be sent directly to the Federal Reserve Bank in New
3	York City with the following information:
4	Federal Reserve Bank of New York
5	ABA = 021030004
6	Account = 68010727
7	SWIFT address = FRNYUS33
8	33 Liberty Street
9	New York, NY 10045
10	Field Tag 4200 of the Fedwire message should read "D 68010727
11	Environmental Protection Agency"
12	
13	Overnight Mail:
14	U.S. Bank
15	1005 Convention Plaza
16	Mail Station SL-MO-C2GL
17	ATTN Box 979077
18	St. Louis, MO 63101
19	0. Doub, 1.10 05101
20	ACH (also known as REX or remittance express):
21	Automated Clearinghouse (ACH) for receiving U.S. currency
22	PNC Bank
23	808 17 <sup>th</sup> Street, NW
24	Washington, DC 20074
25	ABA = 051036706
26	Transaction Code 22 – checking
27	Environmental Protection Agency
28	Account 31006
29	CTX Format
30	
31	On Line Payment:
32	This payment option can be accessed from the information below:
33	www.pay.gov
34	Enter "sfo1.1" in the search field
35	Open form and complete required fields
36	- r
37	If clarification regarding a particular method of payment remittance is
38	needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.
39	
40	
41	A copy of each check, or notification that the payment has been made by one of the other
42	methods listed above, including proof of the date payment was made, shall be sent with a
43	transmittal letter, indicating Respondent's name, the case title, and docket number, to the

1	following addresses:
2	
3	Regional Hearing Clerk
4	Office of Regional Counsel (ORC-1)
5	U.S. Environmental Protection Agency, Region IX
6	75 Hawthorne Street
7	San Francisco, CA 94105
8	
9	Julie Jordan
10	Communities and Ecosystems Division (CED-5)
11	U.S. Environmental Protection Agency, Region IX
12	75 Hawthorne Street
13	San Francisco, CA 94105
14	
15	Margaret Alkon
16	Office of Regional Counsel (ORC-2)
17	U.S. Environmental Protection Agency, Region IX
18	75 Hawthorne Street
19	San Francisco, CA 94105
20	
21	11. In the event that Respondent fails to pay the civil administrative penalty assessed
22	above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in
23	the amount of FIVE HUNDRED DOLLARS (\$500) for each day that payment is late. Upon
24	Complainant's written demand, payable shall immediately become due and payable.
25	12. Respondent's failure to pay in full the civil administrative penalty by its due date also
26	may lead to any or all of the following actions:
27	a. The debt being referred to a credit reporting agency, a collection agency, or to
28	the Department of Justice for filing of a collection action in the appropriate United States District
29	Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
30	and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
31	b. The debt being collected by administrative offset (i.e., the withholding of
32	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.

1.8

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.17.

#### F. CERTIFICATION OF COMPLIANCE

13. In executing this CAFO, Respondent certifies (1) that it is not distributing or selling unregistered Knock Out with pesticide claims; and 2) that it is complying with all other FIFRA requirements at all facilities under its control.

## G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.

- 14. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This CAFO is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations alleged in Section I.C. of this CAFO.
- 15. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C of this 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,

1	ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
2	liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
3	(including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
4	any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.
5	This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to
6	comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
7	permits.
8	16. The provisions of this CAFO shall be binding on Respondent and on Respondent's
9	officers, directors, employees, agents, servants, authorized representatives, successors, and
10	assigns.
11	17. Except as set forth in Paragraph 12 above, each party shall bear its own fees, costs,
12	and disbursements in this action.
13	18. For the purposes of state and federal income taxation, Respondent shall not claim a
14	deduction for any civil penalty payment made pursuant to this CAFO.
15	19. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this
16	CAFO shall be the date on which the accompanying Final Order, having been signed by the
17	Regional Judicial Officer, is filed.
18	20. The undersigned representatives of each party to this Consent Agreement certify that
19	each is duly authorized by the party whom he or she represents to enter into the terms and
20	

1	conditions of this Consent Agreement and Final Order and bind that party to it.
2	
3	
4	OMNI RESEARCH CORPORATION:
5	
6	$\mathcal{L}_{i}$
7	Date: 8/20/2012 By: StriBrumagu
8	
9	1 . 🗇
10	Name: Lori Drumagin
11	Name: Lori Brumagin
12	$V:=\sum_{i}V_{i}$
13	Title: Vice President
14	
15	
16	
17	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:
18	
19	. 1111 111
20	9/11/2007
21	Date: 9/14/2012 By: 100 hue 1/1/2
22	/ / KATHERINE TAYALOR
23	Associate Director for Agriculture
24	Communities and Ecosystems Division
25	U.S. Environmental Protection Agency,
26	Region IX
27	
28	

## 1 **II. FINAL ORDER** 2 IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and 3 that Respondent shall pay a civil administrative penalty in the amount of SIXTY EIGHT 4 THOUSAND SIX HUNDRED FORTY DOLLARS (\$68,640) in accordance with the terms set 5 forth in the Consent Agreement. 6 7 8 9 Date: 09/25/12 10 Steven Jawgiel 11 Regional Judicial Officer 12 U.S. EPA, Region XX 13

14

#### CERTIFICATION / CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2012-00 , was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail (7010 2780 0000 8388 6682), return receipt requested, addressed to the following address:

Ms. Lori Brumagin Vice President Omni Research Corporation dba Bio-Dex Laboratories 4212 W. Innovative Dr. Phoenix, AZ 85086

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Margaret Alkon, Esq Office of Regional Counsel U.S. EPA, Region IX 75 Hawthorne Street San Francisco, CA 94105

\$ 9/24/12

Bryan K. Goodwin

Regional Hearing Clerk

U.S. EPA, Region IX



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

#### **REGION IX**

#### 75 Hawthorne Street San Francisco, CA 94105-3901

# CERTIFIED MAIL RETURN RECEIPT REQUESTED 7010 2780 0000 8388 6682

Date: SEP 2 6 2012

Ms. Lori Brumagin Vice President Omni Research Corporation, dba Bio-Dex Laboratories 4212 W. Innovative Dr. Phoenix, AZ 85086

Subject:

Omni Research Corporation, dba Bio-Dex Laboratories.

Consent Agreement and Final Order Docket No. FIFRA-09-2012-00 04

Dear Ms. Brumagin:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Sections 136 et seq. for the above referenced case. The terms of the CAFO require the payment to be received by EPA within 30 days of the effective date of the CAFO.

If you have any questions, please have your attorney contact Margaret Alkon, Assistant Regional Counsel, telephone number (415) 972-3890.

Sincerely,

Katherine A. Taylor/

Associate Director for Agriculture

Communities and Ecosystems Division

Enclosure

ecc: Jack Peterson, AZ Department of Ag

Chuck Moses, NV Department of Ag Shelly Letcher, AZ Department of Ag

Luke Conyac, Esq., Conyac & Associates, LLC