

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

FILED

2007 SEP 11 PM 1:12

U.S. EPA, REGION IX  
REGIONAL HEARING CLERK

In the matter of: ) Docket No. FIFRA-09-2007- 0024  
)  
Unified Western ) CIVIL COMPLAINT  
Grocers, Inc. ) and  
) NOTICE OF  
Respondent ) OPPORTUNITY FOR HEARING

**PRELIMINARY STATEMENT**

This is a civil administrative action instituted under the authority of Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136I(a). Complainant is the Associate Director for Agriculture, Communities and Ecosystems Division, United States Environmental Protection Agency ("EPA"), Region IX. The EPA Administrator delegated the authority to institute this action to Complainant (EPA Delegation Order 5-14; EPA Regional Order R9 1255.08 CHG1). This Complaint and Notice of Opportunity for a Hearing ("Complaint") serves as notice that Complainant has evidence which shows that Unified Western Grocers, Inc. (hereafter "Respondent") violated section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**GENERAL ALLEGATIONS**

1. Respondent is a California corporation.
2. 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. 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.
4. Section 2(gg), of FIFRA, 7 U.S.C. § 136(gg), states that "to distribute or sell" means to

1 distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for  
2 shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

3 5. Section 2(u) of FIFRA, 7 U.S.C. §136(u), states that the term "pesticide" means any  
4 substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any  
5 pest.

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

11 7. Forty C.F.R. § 152.15(a)(1) provides that a substance is considered to be intended for a  
12 pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or  
13 sells the substance claims, states, or implies (by labeling or otherwise) that the substance (either by  
14 itself or in combination with any other substance) can or should be used as a pesticide.

15 8. Deodorizers, bleaches, and cleaning agents are products or articles that are not considered  
16 to be pesticides unless a pesticidal claim is made on their labeling or in connection with their sale  
17 and distribution. See 40 C.F.R. §152.10.

18 9. At all times relevant to this complaint, the label of the product Western Family Cleanser  
19 with Bleach stated that "Cleanser wipes out most household germs, including Staph, Salmonella,  
20 and Pseudomonas...."

21 10. Staph, Salmonella, and Pseudomonas are types of bacteria.

22 11. Therefore, Staph, Salmonella and Pseudomonas are "pests" as that term is defined at  
23 section 2(t) of FIFRA, 7 U.S.C. § 136(t).

24 12. Pesticides are required to have the statement "It is a violation of Federal law to use this  
25 product in a manner inconsistent with its labeling" on their labeling. See 40 C.F.R. §  
26 156.10(i)(2)(ii).

27 13. At all times relevant to this complaint, the label of the product Western Family Cleanser  
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1 with Bleach stated that "It is a violation of Federal law to use this product in a manner inconsistent  
2 with its labeling."

3 14. Therefore, at all times relevant to this complaint, the labeling of the product Western  
4 Family Cleanser with Bleach contained pesticidal claims.

5 15. At all times relevant to this complaint, the product Western Family Cleanser with Bleach  
6 was a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

7 16. At all times relevant to this complaint, Respondent "sold or distributed" the pesticide  
8 Western Family Cleanser with Bleach, as those terms are defined by Section 2 (gg) of FFIRA, 7  
9 U.S.C. §136(gg).

10 17. Western Family Cleanser with Bleach was not registered with EPA as required under  
11 Section 3 of FIFRA, 7 U.S.C. § 136a.

## 12 VIOLATIONS

### 13 *Counts 1 through 92: Distribution or sale of an unregistered pesticide,* 14 *in violation of Section 12(a)(1)(A) of FIFRA*

15 18. Paragraphs 1 through 17 of this Complaint are hereby incorporated by reference and  
16 alleged as if set forth in full herein.

17 19. On or about April 4, 2006, Donna Marciano, an inspector from the State of California  
18 Department of Pesticide Regulation ("DPR"), conducted a for-cause inspection of Unified Western  
19 Grocers at 1990 Piccoli Road, Stockton, California.

20 20. On or about June 19, 2006, Unified Western Grocer representative Patrick Guillermet  
21 sent to DPR Inspector Marciano an invoice summary identifying 92 sales of the pesticide Western  
22 Family Cleanser with Bleach that occurred from December 1, 2005 to April 4, 2006 (hereafter the  
23 "Invoice Summary"). (Respondent has requested that EPA treat individual invoices and any  
24 information containing the names of the retail grocery stores who purchase products from Unified  
25 Western Grocers as confidential business information pursuant to 40 C.F.R. § 2.201, et. seq.).

26 21. Each of the 92 sales of the pesticide, Western Family Cleanser with Bleach, listed in the  
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1 Invoice Summary, constitute one violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. §  
2 136j(a)(1)(A), which prohibits the distribution or sale of an unregistered pesticide.

### 3 PROPOSED CIVIL PENALTY

4 22. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(2), as adjusted by the Debt Collection  
5 Improvement Act of 1996, 31 U.S.C. § 3701, codified at 40 C.F.R. Part 19, authorizes the  
6 assessment of a civil penalty of up to \$6,500 for each offense occurring after March 15, 2004. EPA  
7 has determined that the appropriate penalty for the violations alleged above is **FIVE HUNDRED**  
8 **THIRTY EIGHT THOUSAND TWO HUNDRED DOLLARS (\$538,200)**. The proposed  
9 penalty was derived pursuant to EPA's Enforcement Response Policy for the Federal Insecticide,  
10 Fungicide, and Rodenticide Act issued by the Office of Compliance Monitoring on July 2, 1990. In  
11 determining the amount of the penalty that is appropriate in this case, as required by law, the Agency  
12 considered the size of the business, the effect on Respondent's ability to continue in business, and  
13 the gravity of the violation.

### 14 NOTICE OF OPPORTUNITY TO REQUEST A HEARING

15 As provided in Section 14(a)(3) of FIFRA, you have the right to request a formal hearing to  
16 contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed  
17 penalty. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil  
18 Penalties and the Revocation or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22,  
19 govern the procedures of the hearing. A copy of the Consolidated Rules accompanies this  
20 Complaint.

21 To avoid being found in default, which constitutes an admission of all facts alleged in the  
22 Complaint and a waiver of the right to a hearing, and having the above-cited penalty assessed  
23 without further proceedings, you must file a written Answer within thirty (30) days of your receipt  
24 of this Complaint. First, your Answer must clearly and directly admit, deny or explain each of the  
25 factual allegations contained in this Complaint with regard to which you have any knowledge or  
26 information. If you have no knowledge or information of a particular fact, you must so state and the  
27 allegation is considered denied. If your Answer fails to deny any allegation, it will constitute an  
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1 admission. Second, your Answer must also briefly state all facts and circumstances, if any, which  
2 constitute grounds for a defense. Third, your Answer must specifically request an administrative  
3 hearing (if desired), however, if you deny any material fact or raise any affirmative defense, you will  
4 be considered to have requested a hearing. Your Answer must be sent to:

5 Regional Hearing Clerk  
6 United States Environmental Protection Agency  
7 Region IX, RC-1  
8 75 Hawthorne Street  
9 San Francisco, CA 94105

10 Please send a copy of your Answer and all other documents which you file in this action to Margaret  
11 Alkon, the attorney assigned to represent EPA in this matter, at:

12 Margaret Alkon, Esquire  
13 Office of Regional Counsel, ORC-2  
14 U.S. Environmental Protection Agency, Region IX  
15 75 Hawthorne Street  
16 San Francisco, CA 94105  
17 (415) 972-3890

#### 18 INFORMAL SETTLEMENT CONFERENCE

19 EPA encourages settlement of a proceeding at any time if the settlement is consistent with  
20 the provisions and objectives of FIFRA and the applicable regulations. Therefore, even if you  
21 choose not to request a hearing, you may confer informally with the attorney assigned to represent  
22 EPA in this matter, Margaret Alkon, to discuss the facts of this case, the amount of the proposed  
23 civil penalty, or the possibility of settlement. **An informal settlement conference does not,**  
24 **however, affect your obligation to file a written Answer to the Complaint within thirty (30)**  
25 **days after receiving this Complaint.**

26 EPA has the authority to modify the amount of the proposed penalty, where appropriate, to  
27 reflect any settlement reached with you in an informal conference. The terms of such an agreement  
28 would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by EPA  
and yourself would be binding as to all terms and conditions specified therein upon signature by the  
EPA Regional Administrator.

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U.S. Environmental Protection Agency  
Region 9  
Regional Hearing Clerk  
P.O. Box 360863M  
Pittsburgh, PA 15251

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Bill Lee  
Pesticides Program  
Cross Media Division (CMD-5)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

1 issued. Please also be reminded that failure to file an Answer or respond to this civil complaint may  
2 result in a default order being issued for collection of the full civil penalty.

3 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, COMPLAINANT**

4  
5  
6 DATE: 9/11/07

7 By: 

8 KATHERINE A. TAYLOR  
9 Associate Director for Agriculture  
10 Communities and Ecosystems Division  
11 U.S. Environmental Protection Agency, Region IX  
12 75 Hawthorne Street  
13 San Francisco, California 94105  
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CERTIFICATE OF SERVICE

I certify that the original and a copy of the foregoing Complaint and Notice of Opportunity for Hearing was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region 9, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the Complaint; and the Consolidated Rules of Practice, 40 C.F.R. Part 22; were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Alfred A. Plamann,  
President/CEO  
Unified Western Grocers, Inc.  
5200 Sheila Street  
Los Angeles, CA 90040

Certified Return Receipt No. **7005 3110 0002 8247 2565**

Dated: 9/14/07

By: Alfred A. Plamann