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U.S. EPA, REGION IX  
REGIONAL HEARING CLERK

10 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

11 REGION 9

13 In the Matter of:

14 99 Cents Only Stores  
15 4000 Union Pacific Avenue  
16 Los Angeles, California 90023-3202

17 Proceeding under Section 14 of  
18 the Federal Insecticide, Fungicide, and  
19 Rodenticide Act, 7 U.S.C. § 1361

Docket No. FIFRA-09-2008-0027

ANSWER AND REQUEST FOR A  
HEARING

1           **I. ANSWER**

2           Respondent 99 Cents Only Stores ("Respondent") answers the Complaint And Notice Of  
3 Opportunity For Hearing filed by the Director of the Communities and Ecosystems Division, U.S.  
4 Environmental Protection Agency, Region 9 ("Complainant") as follows:

5           1.       Paragraph 1 of the Complaint contains only legal conclusions for which a response  
6 is not required. To the extent that the legal conclusions incorporate factual allegations,  
7 Respondent incorporates by reference its responses to the factual allegations of the Complaint as  
8 set forth herein.

9           2.       Paragraph 2 of the Complaint contains only legal conclusions for which a response  
10 is not required. To the extent that the legal conclusions incorporate factual allegations,  
11 Respondent incorporates by reference its responses to the factual allegations of the Complaint as  
12 set forth herein.

13          3.       Paragraph 3 of the Complaint contains only legal conclusions for which a response  
14 is not required. To the extent that the legal conclusions incorporate factual allegations,  
15 Respondent incorporates by reference its responses to the factual allegations of the Complaint as  
16 set forth herein.

17          4.       Paragraph 4 of the Complaint contains only legal conclusions for which a response  
18 is not required. To the extent that the legal conclusions incorporate factual allegations,  
19 Respondent incorporates by reference its responses to the factual allegations of the Complaint as  
20 set forth herein.

21          5.       Paragraph 5 of the Complaint contains only legal conclusions for which a response  
22 is not required. To the extent that the legal conclusions incorporate factual allegations,  
23 Respondent incorporates by reference its responses to the factual allegations of the Complaint as  
24 set forth herein.

25          6.       Paragraph 6 of the Complaint contains only legal conclusions for which a response  
26 is not required. To the extent that the legal conclusions incorporate factual allegations,  
27 Respondent incorporates by reference its responses to the factual allegations of the Complaint as  
28

1 set forth herein.

2 7. Paragraph 7 of the Complaint contains only legal conclusions for which a response  
3 is not required. To the extent that the legal conclusions incorporate factual allegations,  
4 Respondent incorporates by reference its responses to the factual allegations of the Complaint as  
5 set forth herein.

6 8. Paragraph 8 of the Complaint contains only legal conclusions for which a response  
7 is not required. To the extent that the legal conclusions incorporate factual allegations,  
8 Respondent incorporates by reference its responses to the factual allegations of the Complaint as  
9 set forth herein.

10 9. Paragraph 9 of the Complaint contains only legal conclusions for which a response  
11 is not required. To the extent that the legal conclusions incorporate factual allegations,  
12 Respondent incorporates by reference its responses to the factual allegations of the Complaint as  
13 set forth herein.

14 10. Respondent admits the allegations in Paragraph 10.

15 11. Paragraph 11 of the Complaint contains only legal conclusions for which a  
16 response is not required. To the extent that the legal conclusions incorporate factual allegations,  
17 Respondent incorporates by reference its responses to the factual allegations of the Complaint as  
18 set forth herein.

19 12. Respondent admits the allegations in Paragraph 12.

20 13. Respondent admits the allegations in Paragraph 13.

21 14. Respondent admits the allegations in Paragraph 14.

22 15. Respondent admits that the quoted language in Paragraph 15 is contained in the  
23 2008 Annual Report, but notes that the quoted language is taken out of context and does not  
24 appear in the same sentence in the Annual Report.

25 16. Respondent admits that the language quoted in Paragraph 16 appears in its April 2,  
26 2007 Form 10-K report filed with the U. S. Securities and Exchange Commission.

27 17. Respondent admits that the language quoted in Paragraph 17 appears in its 2008  
28 Annual Report.

1           18.     Respondent lacks sufficient knowledge or information to admit or deny the  
2 allegations in Paragraph 18 and on that basis denies them.

3           19.     Respondent lacks sufficient knowledge or information to admit or deny the  
4 allegations in Paragraph 19 and on that basis denies them.

5           20.     Respondent incorporates its responses to Paragraphs 1 through 18 as though fully  
6 stated herein.

7           21.     Respondent admits the allegations in Paragraph 21.

8           22.     Respondent lacks sufficient knowledge or information to admit or deny the  
9 allegations in Paragraph 22 and on that basis denies them.

10          23.     Respondent lacks sufficient knowledge or information to admit or deny the  
11 allegations in Paragraph 23 and on that basis denies them.

12          24.     Paragraph 24 contains only legal conclusions for which a response is not required.  
13 To the extent that the legal conclusions require a response, Respondent denies those allegations.

14          25.     Respondent lacks sufficient knowledge or information to admit or deny the  
15 allegations in Paragraph 25 and on that basis denies them.

16          26.     Paragraph 26 contains only legal conclusions for which a response is not required.  
17 To the extent that the legal conclusions require a response, Respondent denies those allegations.

18          27.     Respondent incorporates its responses to Paragraphs 1 through 18 as though fully  
19 stated herein.

20          28.     Respondent admits the allegations in Paragraph 28.

21          29.     Respondent admits that on September 8, 2005, a CDPR inspector inspected  
22 Respondent's Lawndale Store, and that Respondent was selling a product called "Bref."  
23 Respondent denies the other allegations in Paragraph 29.

24          30.     Respondent lacks sufficient knowledge or information to admit or deny the  
25 allegations in Paragraph 30 and on that basis denies them.

26          31.     Paragraph 31 contains only legal conclusions for which a response is not required.  
27 To the extent that the legal conclusions require a response, Respondent denies those allegations.

28          32.     Respondent lacks sufficient knowledge or information to admit or deny the

1 allegations in Paragraph 32 and on that basis denies them.

2 33. Respondent lacks sufficient knowledge or information to admit or deny the  
3 allegations in Paragraph 33 and on that basis denies them.

4 34. Respondent admits the allegations in Paragraph 34 to the extent they refer to a  
5 product called Bref. To the extent the allegations in this product imply that the labels on the Bref  
6 products sold in the 38 stores referenced in Paragraph 34 were identical to the label on the Bref  
7 product referenced in Paragraph 29, Respondent lacks sufficient knowledge or information to  
8 admit or deny that implied allegation and on that basis denies it.

9 35. Respondent admits the allegations in Paragraph 35 to the extent they refer to a  
10 product called Bref. To the extent the allegations in this product imply that the labels on the Bref  
11 products sold in the 38 stores referenced in Paragraph 35 were identical to the label on the Bref  
12 product referenced in Paragraph 29, Respondent lacks sufficient knowledge or information to  
13 admit or deny that implied allegation and on that basis denies it.

14 36. Respondent admits the allegations in Paragraph 36 to the extent they refer to a  
15 product called Bref. To the extent the allegations in this product imply that the labels on the Bref  
16 products sold in the 38 stores referenced in Paragraph 36 were identical to the label on the Bref  
17 product referenced in Paragraph 29, Respondent lacks sufficient knowledge or information to  
18 admit or deny that implied allegation and on that basis denies it.

19 37. Respondent admits the allegations in Paragraph 37 to the extent they refer to a  
20 product called Bref. To the extent the allegations in this product imply that the labels on the Bref  
21 products sold in the 38 stores referenced in Paragraph 37 were identical to the label on the Bref  
22 product referenced in Paragraph 29, Respondent lacks sufficient knowledge or information to  
23 admit or deny that implied allegation and on that basis denies it.

24 38. Respondent admits the allegations in Paragraph 38 to the extent they refer to a  
25 product called Bref. To the extent the allegations in this product imply that the labels on the Bref  
26 products sold in the 38 stores referenced in Paragraph 38 were identical to the label on the Bref  
27 product referenced in Paragraph 29, Respondent lacks sufficient knowledge or information to  
28 admit or deny that implied allegation and on that basis denies it.

1           39.     Respondent admits the allegations in Paragraph 39 to the extent they refer to a  
2 product called Bref. To the extent the allegations in this product imply that the labels on the Bref  
3 products sold in the 38 stores referenced in Paragraph 39 were identical to the label on the Bref  
4 product referenced in Paragraph 29, Respondent lacks sufficient knowledge or information to  
5 admit or deny that implied allegation and on that basis denies it.

6           40.     Respondent admits the allegations in Paragraph 40 to the extent they refer to a  
7 product called Bref. To the extent the allegations in this product imply that the labels on the Bref  
8 products sold in the 38 stores referenced in Paragraph 40 were identical to the label on the Bref  
9 product referenced in Paragraph 29, Respondent lacks sufficient knowledge or information to  
10 admit or deny that implied allegation and on that basis denies it.

11          41.     Paragraph 41 contains only legal conclusions for which a response is not required.  
12 To the extent that the legal conclusions require a response, Respondent denies those allegations.

13          42.     Respondent incorporates its responses to Paragraphs 1 through 18 as though fully  
14 stated herein.

15          43.     Respondent lacks sufficient knowledge or information to admit or deny the  
16 allegations in Paragraph 43 and on that basis denies them.

17          44.     Respondent lacks sufficient knowledge or information to admit or deny the  
18 allegations in Paragraph 44 and on that basis denies them.

19          45.     Respondent lacks sufficient knowledge or information to admit or deny the  
20 allegations in Paragraph 45 and on that basis denies them.

21          46.     Respondent lacks sufficient knowledge or information to admit or deny the  
22 allegations in Paragraph 46 and on that basis denies them.

23          47.     Respondent lacks sufficient knowledge or information to admit or deny the  
24 allegations in Paragraph 47 and on that basis denies them.

25          48.     Paragraph 48 contains only legal conclusions for which a response is not required.  
26 To the extent that the legal conclusions require a response, Respondent denies those allegations.

27          49.     Paragraph 49 contains only legal conclusions for which a response is not required.  
28 To the extent that the legal conclusions require a response, Respondent denies those allegations.

1           50. Paragraph 50 contains only legal conclusions for which a response is not required.  
2 To the extent that the legal conclusions require a response, Respondent denies those allegations.

3 **II. DEFENSES**

4 **A. Failure To State A Claim**

5           The Complaint and each of the counts alleged therein fail to state a claim upon which  
6 relief can be granted.

7 **B. Bleach Exception**

8           The Bref products referenced in Counts 2 through 165 are bleach products that should not  
9 be subject to regulation as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide  
10 Act, 7 U.S.C. § 136 *et seq.*

11 **C. No Liability For Manufacturer Misapplication Of Labels**

12           A retailer should not be held liable for a manufacturer's misapplication of otherwise  
13 compliant pesticide labels for a properly registered pesticide product.

14 **D. Unconstitutional Penalty Demand**

15           The proposed civil penalty is unconstitutional.

16 **III. REQUEST FOR A HEARING**

17           Pursuant to 40 C.F.R. § 22.15(c) (and any other applicable statute or regulation  
18 authorizing an administrative hearing on the Complaint), Respondent requests a hearing on all  
19 issues raised by the Complaint and this Answer.

20 **IV. REQUEST FOR APPOINTMENT OF A NEUTRAL FOR SETTLEMENT**  
21 **PURPOSES**

22           Pursuant to 40 C.F.R. § 22.18(c)(3), Respondent requests that a neutral be appointed to  
23 preside over a mediation of the claims raised in the Complaint.

24           WHEREFORE, Respondent prays as follows:

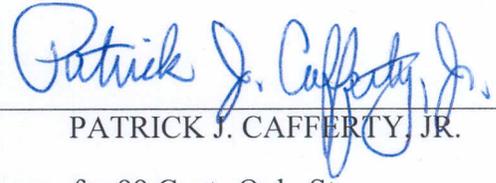
- 25           1. That Complainant take nothing by reason of the Complaint, and that a final order  
26 dismissing the Complaint with prejudice be issued;
- 27           2. That Respondent be awarded its costs and expenses of suit, including reasonable  
28 attorneys' fees;

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3. For such further relief as may be deemed just and proper.

DATED: October 28, 2008

MUNGER, TOLLES & OLSON LLP  
PATRICK J. CAFFERTY, JR.

By:   
PATRICK J. CAFFERTY, JR.

Attorneys for 99 Cents Only Stores

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO:

I, the undersigned, declare that I am over the age of 18 and not a party to the within cause. I am employed by Munger, Tolles & Olson LLP in the County of San Francisco, State of California. My business address is 560 Mission Street, Twenty-Seventh Floor, San Francisco, California 94105-2907.

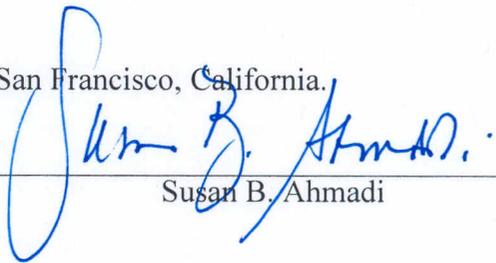
On October 29, 2008, I served upon the interested party in this action the foregoing document described as:

**ANSWER AND REQUEST FOR A HEARING**

- By placing  the original(s)  a true and correct copy thereof, as set out below, in an addressed, sealed envelope clearly labeled to identify the person being served at the address set forth below.
- BY PERSONAL DELIVERY** I caused such envelope to be delivered to Brian P. Riedel, Assistant Regional Counsel at the United States Environmental Protection Agency, Region 9, on that same date during the course of filing the **Answer And Request For A Hearing** with Danielle Carr, Regional Hearing Clerk, United States Environmental Protection Agency, Region 9 at that same address.
- (STATE)** I declare under penalty of perjury that the foregoing is true and correct.

Brian P. Riedel  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Executed on October 29, 2008, at San Francisco, California.

  
\_\_\_\_\_  
Susan B. Ahmadi