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U.S. EPA REGION IX  
REGIONAL HEARING CLERK

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7 UNITED STATES  
8 ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10 In the matter of: ) Docket No. FIFRA-09-2011-0028

11 )

12 HealthyPets, Inc., ) CONSENT AGREEMENT  
AND FINAL ORDER

13 Respondent. ) pursuant to 40 C.F.R. §§ 22.13(b),  
22.18(b)(2), and 22.18(b)(3)

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15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency ("EPA"), Region IX, and  
17 HealthyPets, Inc. (the "Respondent") agree to settle this matter and consent to the entry of this  
18 Consent Agreement and Final Order ("CAFO").

19 A. AUTHORITY AND PARTIES

20 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal  
21 Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136/(a)(1), for the assessment  
22 of a civil administrative penalty against Respondent for the detaching, altering, defacing, or  
23 destroying, in whole or in part, of labeling required under FIFRA in violation of Section  
24 12(a)(2)(A) of FIFRA, 7 U.S.C. § 136j(a)(2)(A).

25 2. Complainant is the Associate Director for Agriculture of the Communities and  
26 Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional  
27 Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation  
28 Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further

1 delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture  
2 of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1,  
3 dated June 9, 2005.

4 3. Respondent is HealthyPets, Inc., an active corporation whose headquarters is located  
5 in Union City, California.

6 **B. STATUTORY AND REGULATORY BASIS**

7 4. Section 12(a)(2)(A) of FIFRA, 7 U.S.C. § 136j(a)(2)(A), makes it unlawful for any  
8 person to detach, alter, deface or destroy, in whole or in part, any labeling required under FIFRA.

9 5. Section 3(c)(5)(B) of FIFRA, 7 U.S.C. § 136a(c)(5)(B), as well as 40 C.F.R. § 156.10,  
10 require that every pesticide approved by EPA for registration under FIFRA bear labeling  
11 containing information as required pursuant to the statute and its implementing regulations.

12 6. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” to mean all labels  
13 and all other written, printed, or graphic matter accompanying the pesticide or device at any time  
14 or to which reference is made on the label or in literature accompanying the pesticide or device.

15 7. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” to mean the written,  
16 printed, or graphic material on, or attached to, the pesticide or device or any of its containers or  
17 wrappers.

18 **C. ALLEGED VIOLATIONS**

19 8. Respondent is a corporation and therefore fits within the definition of “person” as that  
20 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

21 9. Frontline Top Spot Orange for Dogs (EPA Registration No. 65331-3), Frontline Plus  
22 for Cats (EPA Registration No. 65331-4), and Frontline Plus Blue for Dogs (EPA Registration  
23 No. 65331-5) are substances intended for preventing, destroying, repelling, or mitigating any pest  
24 and are therefore “pesticides” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. §  
25 136(u).

26 10. As registered pesticides, Frontline Top Spot Orange for Dogs, Frontline Plus for  
27 Cats, and Frontline Plus Blue for Dogs bear labeling approved by EPA as required pursuant to  
28 Section 3(c)(5)(B) of FIFRA, 7 U.S.C. § 136a(c)(5)(B), and 40 C.F.R. § 156.10.

1 11. On or about October 28, 2010 and November 2, 2010, Respondent “distributed or  
2 sold,” as those terms are defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the registered  
3 pesticides Frontline Top Spot Orange for Dogs, Frontline Plus for Cats, and Frontline Plus Blue  
4 for Dogs to customers in the United States.

5 12. The registered pesticides Frontline Top Spot Orange for Dogs, Frontline Plus for  
6 Cats, and Frontline Plus Blue for Dogs received by the customers on the above-described dates  
7 arrived as single-dose applicator tubes removed from the retail packaging (approved for sale in  
8 either three dose or six dose formats) and lacking at least in part the required labeling previously  
9 approved by EPA as part of their registration.

10 13. Respondent detached, altered, defaced, or destroyed the “labeling” for the registered  
11 pesticides Frontline Top Spot Orange for Dogs, Frontline Plus for Cats, and Frontline Plus Blue  
12 for Dogs when it took apart the retail packaging, subdivided the doses, and failed to include all of  
13 the necessary labeling.

14 14. By detaching, altering, defacing, or destroying, in whole or in part, the labeling  
15 required under FIFRA for the registered pesticides Frontline Top Spot Orange for Dogs,  
16 Frontline Plus for Cats, and Frontline Plus Blue for Dogs, Respondent violated Section  
17 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

18 15. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Monetary Penalty  
19 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any registrant, commercial applicator,  
20 wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be  
21 assessed a civil penalty by the EPA Administrator in an amount not to exceed \$7,500 for each  
22 offense occurring after January 12, 2009. Under the FIFRA Enforcement Response Policy, dated  
23 December 2009, and the Civil Monetary Penalty Inflation Adjustment Rule, the three violations  
24 cited above would merit a pre-modification civil penalty of \$8,900, given the alleged violations’  
25 gravity level, size of business, and applicable gravity adjustments.

26 **D. RESPONDENT’S ADMISSIONS**

27 16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
28 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over

1 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section  
2 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the  
3 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any  
4 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the  
5 proposed Final Order contained in this CAFO.

6 E. CIVIL ADMINISTRATIVE PENALTY

7 17. In settlement of the violations specifically alleged in Section I.C of this CAFO,  
8 Respondent shall pay a civil administrative penalty of SEVEN THOUSAND, ONE HUNDRED  
9 AND TWENTY DOLLARS (\$7,120). Respondent shall pay this civil penalty within thirty (30)  
10 days of the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or  
11 cashier's check, including the name and docket number of this case, for the amount, payable to  
12 "Treasurer, United States of America," (or be paid by one of the other methods listed below) and  
13 sent as follows:

14 Regular Mail:

15 U.S. Environmental Protection Agency  
16 Fines and Penalties  
17 Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

18 Wire Transfers:

19 Wire transfers must be sent directly to the Federal Reserve Bank in New  
20 York City with the following information:  
21 Federal Reserve Bank of New York  
ABA = 021030004  
22 Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
23 Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

24 Overnight Mail:

25 U.S. Bank  
1005 Convention Plaza  
26 Mail Station SL-MO-C2GL  
ATTN Box 979077  
27 St. Louis, MO 63101

28 ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving U.S. currency  
PNC Bank

1 808 17<sup>th</sup> Street, NW  
2 Washington, DC 20074  
3 ABA = 051036706  
4 Transaction Code 22 – checking  
5 Environmental Protection Agency  
6 Account 31006  
7 CTX Format

8 On Line Payment:

9 This payment option can be accessed from the information below:  
10 www.pay.gov  
11 Enter "sfo1.1" in the search field  
12 Open form and complete required fields

13 If clarification regarding a particular method of payment remittance is  
14 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

15 A copy of each check, or notification that the payment has been made by one of the other  
16 methods listed above, including proof of the date payment was made, shall be sent with a  
17 transmittal letter, indicating Respondent's name, the case title, and docket number, to the  
18 following addresses:

19 Regional Hearing Clerk  
20 Office of Regional Counsel (ORC-1)  
21 U.S. Environmental Protection Agency, Region IX  
22 75 Hawthorne Street  
23 San Francisco, CA 94105

24 Nancy Yoshikawa  
25 Communities and Ecosystems Division (CED-5)  
26 U.S. Environmental Protection Agency, Region IX  
27 75 Hawthorne Street  
28 San Francisco, CA 94105

Edgar P. Coral  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

18. Respondent shall not use payment of any penalty under this CAFO as a tax deduction  
from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to  
use such payment as a tax deduction.

19. If Respondent fails to pay the assessed civil administrative penalty of SEVEN  
THOUSAND, ONE HUNDRED AND TWENTY DOLLARS (\$7,120), as identified in

1 Paragraph 17, by the deadline specified in that Paragraph, then Respondent shall also pay a  
2 stipulated penalty to EPA upon EPA's written request. The amount of the stipulated penalty will  
3 be ONE THOUSAND, SEVEN HUNDRED, AND EIGHTY DOLLARS (\$1,780), and will be  
4 immediately due and payable upon EPA's written request on the day following the deadline  
5 specified in Paragraph 17, together with the initially assessed civil administrative penalty of  
6 SEVEN THOUSAND, ONE HUNDRED AND TWENTY DOLLARS (\$7,120), resulting in a  
7 total penalty due of EIGHT THOUSAND, NINE HUNDRED DOLLARS (\$8,900). Failure to  
8 pay the civil administrative penalty specified in Paragraph 17 by the deadline specified in that  
9 Paragraph may also lead to any or all of the following actions:

10 (1) EPA may refer the debt to a credit reporting agency, a collection  
11 agency, or to the Department of Justice for filing of a collection action in the appropriate United  
12 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and  
13 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such  
14 collection proceeding.

15 (2) The U.S. Government may collect the debt by administrative offset  
16 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a  
17 person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
18 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
19 C.F.R. §§ 13(C) and 13(H).

20 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke  
21 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
22 business with EPA or engaging in programs EPA sponsors or funds.

23 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
24 Government may assess interest, administrative handling charges, and nonpayment penalties  
25 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
26 civil administrative penalty specified in Paragraph 17 by the deadline specified in that Paragraph.

27 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §  
28 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established

1 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
2 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
3 (30) days of the effective date of this CAFO.

4 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §  
5 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on  
6 either actual or average cost incurred (including both direct and indirect costs), for every month  
7 in which any portion of the assessed penalty is more than thirty (30) days past due.

8 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
9 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,  
10 may be assessed on all debts more than ninety (90) days delinquent.

#### 11 F. CERTIFICATION OF COMPLIANCE

12 20. In executing this CAFO, Respondent certifies that (1) it is no longer detaching,  
13 altering, defacing, or destroying, in whole or in part, any labeling required under FIFRA in  
14 violation of Section 12(a)(2)(A) of FIFRA, 7 U.S.C. § 136j(a)(2)(A), and (2) it is currently in  
15 compliance with all other FIFRA requirements for all its ongoing operations.

#### 16 G. RETENTION OF RIGHTS

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

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

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H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

24. 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

25. 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.

26. 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.

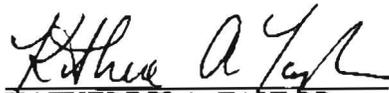
FOR RESPONDENT HEALTHYPETS, INC.:

DATE 9/16/2011

  
~~BOB TAYLOR~~ INTERJECT *2/11/11*  
Principal DIRECTOR  
HealthyPets, Inc.  
34501 Seventh Street  
Union City, CA 94587

FOR COMPLAINANT EPA:

9/28/11  
DATE

  
KATHERINE A. TAYLOR  
Associate Director for Agriculture  
Communities and Ecosystems Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and HealthyPets, Inc. having entered into the foregoing Consent Agreement,  
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2011-06257) be  
4 entered, and Respondent shall pay a civil administrative penalty in the amount of SEVEN  
5 THOUSAND, ONE HUNDRED AND TWENTY DOLLARS (\$7,120), and comply with the  
6 terms and conditions set forth in the Consent Agreement.

7  
8  
9 09/29/11  
DATE

  
STEVEN JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2011-0025) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 91405, and that a true and correct copy of the same was sent to the following parties:

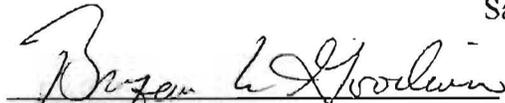
A copy was mailed via CERTIFIED MAIL to:

Mr. Inderjeet Singh, Director  
HealthyPets, Inc.  
34501 Seventh Street  
Union City, CA 94587

**CERTIFIED MAIL NUMBER: 7010 2780 0000 8388 6125**

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

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



Bryan K. Goodwin  
Regional Hearing Clerk  
U.S. EPA, Region IX

9/09/11

Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT NO: 7010 2780 0000 8388 6125**

Date: SEP 29 2011

Mr. Inderjeet Singh, Director  
HealthyPets, Inc.  
34501 Seventh Street  
Union City, CA 94587

Re: Consent Agreement and Final Order  
Docket No.: FIFRA-09-2011- 0025

Dear Mr. Taylor:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning alleged violations of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by HealthyPets, Inc. The terms of the CAFO require the payment of \$7,120 to be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO.

If you have any questions, please contact Nancy Yoshikawa at 415-972-3535.

Sincerely,

A handwritten signature in cursive script, appearing to read "Katherine A. Taylor".

Katherine A. Taylor, Associate Director of Agriculture  
Communities and Ecosystems Division

cc: Patrick Thalken, California Department of Pesticide Regulation