

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of

Modern Day Products, LLC and
Mobile Pro Gear, LLC

Respondents

Proceeding Under the Federal
Insecticide, Fungicide and
Rodenticide Act. as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. FIFRA-02-2018-5109

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §1361(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP").

Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§22.18(b)(2) and 22.18(b)(3). Complainant and Respondents agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

FIFRA Statutory and Regulatory Background

1. Section 2(s) of FIFRA, 7 U.S.C. §136(s), defines "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

2. “To distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. §136(gg), as “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.”
3. Section 2(t) of FIFRA, 7 U.S.C. §136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.
4. Section 2(u) of FIFRA, 7 U.S.C. §136(u), defines the term “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
5. Pursuant to Section 3 of FIFRA, 7 U.S.C. §136a, all pesticides distributed or sold must be registered with EPA.
6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered with EPA.
7. Section 2(p)(1) of FIFRA, 7 U.S.C. §136(p)(1), defines “label” as the written, printed or graphic matter on, or attached to, the pesticide or any of its containers or wrappers.
8. Section 2(p)(2) of FIFRA, 7 U.S.C. §136(p)(2), defines “labeling” as all labels or other written, printed or graphic matter (a) accompanying the pesticide or (b) to which reference is made in literature accompanying the pesticide.
9. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. §136(q)(1)(A) states that a pesticide is misbranded if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false and misleading in any particular.
10. Forty C.F.R. §156.10(a)(5) states that a pesticide or device is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims.

11. Forty C.F.R. §156.10(a)(5)(i)-(x) sets forth examples of statements or representations in the labeling which constitute misbranding.

12. Forty C.F.R. §156.10(g) states that the label of each pesticide product must bear a statement which contains the name and percentage by weight of each active ingredient, the total percentage by weight of all inert ingredients. The active ingredients must be designated by the term “active ingredients” and the inert ingredients by the term “inert ingredients.”

13. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136j(a)(1)(E), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded, as defined by Section 2(q) of FIFRA, 7 U.S.C. §136(q).

14. Forty C.F.R. §152.25 sets out classes of pesticides that are exempt from the provisions of FIFRA under certain conditions described therein.

15. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. §136j(a)(2)(N) and 19 C.F.R. §12.112, an importer desiring to import pesticides into the United States must submit EPA Form 3540-1, Notice of Arrival of Pesticides and Devices, to the EPA prior to the arrival of shipment in the United States.

16. Forty C.F.R. §152.25(f) identifies the conditions necessary to exempt “minimum risk” pesticides from FIFRA. Specifically, the products must: 1) contain only the active ingredients that are listed in 40 C.F.R. §152.25(f)(1); 2) include only inert ingredients listed in the most current “List 4A” (see 40 C.F.R. §152.25(f)(2)); (3) bear a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient (see 40 C.F.R. §152.25(f)(3)); (4) not bear claims either to control or mitigate micro-organisms that pose a threat to human health, including claim to control insects carrying specific diseases (see 40 C.F.R. §152.25(f)(3)(ii)); and (5) not include any false and misleading statements, including those listed in 40 C.F.R. §156.10(a)(5)(i) through (viii) (see 40 C.F.R. §152.25(f)(3)(iii)).

17. If any of the conditions specified in paragraph 16 above is not satisfied, the pesticide product must be registered pursuant to Section 3 of FIFRA, 7 U.S.C. §136a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondents are Modern Day Products, LLC (“Modern Day”), a Limited Liability Company registered in the State of New Jersey, and Mobile Pro Gear, LLC (“Mobile Pro Gear”), a Limited Liability Company registered in the State of Nevada (hereinafter “Respondents”).

2. The Respondents are “internet sellers” and arrange or have arranged for the foreign production, importation, storage and sale and/or distribution of pesticides, specifically the “Zika Shield” and/or “Mosquito Guard” Repellent products.

3. Each Respondent is a "person" as that term is defined in FIFRA §2(s), 7 U.S.C. §136(s), and is subject to FIFRA and the regulations promulgated thereunder.

4. The Respondents are related companies by common ownership (Manuel Castro).

5. Since at least April 2016, Respondent Modern Day maintained an office located at 180 Talmadge Road, Suite #566, Edison, New Jersey 08817 (“the Edison Office”).

6. From at least January 2015 to August 2016, Respondent Mobile Pro Gear maintained an office located at the Edison Office.

7. Since at least February 2016, Respondent Modern Day arranged for the production, importation, storage, sale and/or distribution of the “Mosquito Guard” Repellent Products listed below:

1. Mosquito Guard Repellent Spray
2. Mosquito Guard Repellent Bands/Bracelets
3. Mosquito Guard Citronella Candles
4. Mosquito Guard Repellent Incense Sticks
5. Mosquito Guard KIDS Spiral Repellent Bands/Bracelets
6. Mosquito Guard LED Bulb & Bug Zapper

8. Since at least February 2016, the Mosquito Guard Repellent products have been advertised, offered for sale, and sold on the mosquitoguard.net and Amazon.com websites.

9. From at least April 1, 2016 through September 2016, Respondent Mobile Pro Gear arranged for the production, importation, storage, sale and/or distribution of the “Zika Shield Repellent Products listed below:

1. Zika Shield Repellent Spray
2. Zika Shield Repellent Bands

10. From at least April 1, 2016 through September 2016, the Zika Shield Repellent products have been advertised, offered for sale, and sold several Zika Shield-branded websites (Zikashield.com, MyZikashield.com, Zika-shield.net), all of which have since been taken down, as well as through the Amazon.com website.

11. Upon information and belief, Amazon acted as a fulfillment vendor on behalf of Respondents Modern Day (for the Mosquito Guard Repellent products identified in paragraph 7 of this section) and Mobile Pro Gear (for the Zika Shield Repellent products identified in paragraph 9 of this section) and shipped thousands of the Mosquito Guard and Zika Shield products ordered through the Amazon website/storefront directly to retail customers of Modern Day and Mobile Pro Gear.

12. Each Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. §136(gg).

13. Respondents are each a “wholesaler,” “dealer,” “retailer,” or “other distributor” within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. §136l(a)(1).

14. On or about June 23, 2017, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§136f and 136g, an authorized inspector from EPA Region 2 attempted to conduct an inspection (“the Inspection”) at the Edison Office. No inspection could be conducted.

15. Pursuant to Section 8(b) of FIFRA, 7 U.S.C. §136f(b), and for the purposes of enforcing FIFRA, any distributor of pesticides must furnish or permit EPA to have access to and copy all records showing the delivery, movement, or holding of such pesticide.

16. Pursuant to Section 9(a)(1) of FIFRA, 7 U.S.C. §136g(a)(1), EPA is authorized to enter at reasonable times any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled and released for shipment, and samples of any containers or labeling for such pesticides or devices.

17. In lieu of attempting to conduct an additional inspection, EPA sent an Information Request Letter (IRL) to Modern Day on August 9, 2017.

18. In its September 15, 2017 response to EPA's IRL and in subsequent submissions in October 2017, Modern Day provided copies of the Zika Shield and Mosquito Guard product labels and ingredient statements and documents evidencing the production, importation, distribution and sale of the Mosquito Guard and Zika Shield Repellent products.

19. EPA additionally obtained information and documentation concerning thousands of sales and distributions made on behalf of Mobile Pro Gear during 2016 for the Zika Shield Repellent products and thousands of sales from at least January 1, 2016 through March 2018 on behalf of Modern Day for the Mosquito Guard Repellent products directly from Amazon.

20. As a result of the IRL Response and the documentation obtained, EPA determined that all of Respondents' products were pesticides or devices subject to FIFRA and that none of the products was registered or properly labeled.

21. As a result of the IRL Response and the documentation obtained, EPA further determined that none of Respondents' products was exempt from FIFRA pursuant to 40 C.F.R. §152.25(f) as a minimum risk pesticide.

22. Modern Day's Mosquito Guard Repellent Spray was not a minimum risk pesticide exempt from FIFRA, because it contained an active ingredient, ethanol, which is not listed in 40 C.F.R. §152.25(f)(1).

23. The other Mosquito Guard Repellent products (listed in Paragraph 7 of this section) did not meet the conditions for minimum risk pesticide exemption under 40 C.F.R. §152.25(f)(3)(iii) because each product's label and/or labeling displayed one or more false and misleading claims within the meaning of 40 C.F.R. §156.10(a)(5)(i) through (viii), including the following: (a) on the webpage to purchase Mosquito Guard Repellent Spray on MosquitoGuard.net the product description said "oil of lemon eucalyptus and lavender are used in the products" but the pictures of the label of the product did not have lavender or oil of lemon eucalyptus in the ingredient list;" (b) statements regarding composition: Pesticide Free; free of chemicals, . . . " "; (c) statements concerning effectiveness: complete control of the mosquitos and other insect; effective insect repellent properties; 240 hours of protection'; 200 continuous hours of protection; 48 continuous hours of protection; 12 hours of continuous protection; 6 hours of protection from mosquitos and other garden pests; long lasting protection; (d) statements directly or indirectly implying that the pesticide is recommended by any agency—"It is a violation to use this product in a manner inconsistent with its labeling; Registered with EPA."

24. Mobile Pro Gear's Zika Shield Repellent Spray and Zika Shield Repellent Band were not minimum risk pesticides exempt from FIFRA because:

- a. they contained active ingredients, Lavender Oil and Oil of Lemon Eucalyptus which are not listed in 40 C.F.R. §152.25(f)(1);
- b. the labeling for both products did not identify the name and percentage (by weight) of each active ingredient and the name of each inert ingredient as required by 40 C.F.R. §152.25(f)(3)(i);

- c. the labeling for both products made claims to control or mitigate microorganisms that pose a threat to human health, including claims to control mosquitoes carrying specific diseases, including the following: “it can help repel mosquitos that are known to spread multiple insect-carried diseases;” and “specifically formulated to help prevent mosquito bites that may cause the following insect-carried diseases: Zika Virus; West Nile; Lyme Disease; and Chikungunya” in violation of 40 C.F.R. §152.25(f)(3)(ii); and
- d. the labels and/or labeling on or accompanying each container of Zika Shield Repellent Spray and Zika Shield Repellent Band sold or distributed on behalf of Respondent Mobile Pro Gear displayed false and misleading claims within the meaning of 40 C.F.R. §156.10(a)(5)(i) through (viii), including the following: (i) statements regarding composition: “don’t contain any chemicals;” and “chemical free”; (ii) statements concerning effectiveness: enjoy up to 72 continuous hours of mosquito bite protection; and 360 hour total protection in violation of 40 C.F.R. §152.25(f)(3)(iii).

25. The Zika Shield Repellent Spray and Zika Shield Repellent Band labels each bear the product name and website address “Zika Shield,” which are both false and misleading as they imply that the products specifically shield against the Zika Virus.

26. The Zika Shield Repellent Spray and Zika Shield Repellent Brand are misbranded pursuant to Section 2(q)(2)(C)(i), 7 U.S.C. §136(q)(2)(C)(i) because neither label displayed the name and address of the producer. . . or person for whom produced, as further described in 40 C.F.R. §§156.10(a)(1)(ii) and 156.10(c).

27. None of the Zika Shield Repellent products were registered with EPA under Section 3 of FIFRA, 7 U.S.C. §136a. And none of these pesticides has been registered since.

28. None of the Mosquito Guard Repellent products were registered with EPA under Section 3 of FIFRA, 7 U.S.C. §136a. And none of these pesticides has been registered since.

29. Each of Respondents' sales or distributions of the Zika Shield and/or Mosquito Guard Repellent products was a sale or distribution of an unregistered pesticide.

30. Each of Respondents' sales or distributions of the Zika Shield and Mosquito Guard Repellent products constituted an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A) for which an independent penalty may be assessed under Section 14(a)(1) of FIFRA, 7 U.S.C. §136l(a)(1).

31. Each of Respondents' sales or distributions of the Zika Shield and/or Mosquito Guard Repellent products is a sale or distribution of a misbranded pesticide.

32. Each of Respondents' sales or distributions of the Zika Shield and Mosquito Guard Repellent products constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136j(a)(1)(E) for which an independent penalty may be assessed under Section 14(a)(1) of FIFRA, 7 U.S.C. §136l(a)(1).

33. Each of the Zika Shield and Mosquito Guard pesticide products were imported into the United States between 2016 and 2018 without the filing of required Notice of Arrival Forms with EPA prior to the pesticide's arrival in the United States in violation of 12(a)(2)(N) of FIFRA, 7 U.S.C. §136j(a)(2)(N) and 19 C.F.R. §12.113.

34. Each of Respondents' importations of a Zika Shield and Mosquito Guard Repellent product into the United States without the filing of required Notice of Arrival Forms with EPA prior to the pesticide's arrival constitutes an unlawful act pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. §136j(a)(2)(N) for which an independent penalty may be assessed.

35. On June 25, 2018, July 22, 2018 and July 24, 2018, the Respondents submitted financial information and documentation to EPA regarding Respondents' financial condition and demonstrating a limited ability to pay.

AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed that:

1. Respondents shall hereinafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. §136 *et seq.*, and its implementing regulations, including the requirements which prohibit the sale of unregistered and misbranded pesticides and the importation of pesticides into the United States without the filing of required Notice of Arrival Forms prior to the arrival of the pesticides.
2. Respondents shall comply with the EPA final rule setting out additional conditions for minimum risk pesticides, 80 Fed. Reg. 80653 (December 28, 2015), which has an effective date for compliance on February 26, 2019. (see <https://www.epa.gov/minimum-risk-pesticide/conditions-minimum-risk-pesticides#tab-3>).
3. Respondents certify that, as of the date of execution of this CA/FO, they are in compliance with the statutory provisions of Section 12 of FIFRA, 7 U.S.C. §136j, and its implementing regulations.
4. Respondent Mobile Pro Gear further certifies that, as of the date of the execution of this CA/FO, it has stopped the production, importation, sale and distribution of the Zika Shield Repellent pesticide products.
5. Respondent Mobile Pro Gear agrees that it will not resume the production, importation, sale and distribution of the Zika Shield Repellent pesticide products without first registering any such product pursuant to FIFRA §3.
6. Respondent Modern Day certifies that, as of the date of the execution of this CA/FO it has revised the Mosquito Guard Repellent product labels and labeling, including internet website

advertisements (Mosquitoguard.net and Amazon.com, for example) and other promotional material to comply with all required conditions for exemption from FIFRA as minimum risk pesticides set out at 40 CFR Section 152.25(f).

7. Respondent Modern Day further agrees that any future aesthetic or language changes or any textual, graphic or other modifications which Modern Day may make to the labels or labeling, including internet website advertisements and promotional materials, for the Mosquito Guard Repellent products will be consistent with the terms and conditions of the minimum risk pesticide exemption set out at 40 C.F.R. §152.25(f).

8. Each Respondent further certifies, under penalty of law, that the financial information and documentation submitted to EPA on June 25, 2018, July 22, 2018 and July 24, 2018, regarding Respondents' financial condition is accurate, complete and not misleading. EPA has relied on the accuracy of the financial information and documentation submitted by Respondents during the negotiation of this settlement. Respondent is aware that the submission of false and misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information or documentation provided and/or representations made to Complainant regarding Respondents' claim of inability to pay is false, or in any material respect, inaccurate.

9. Respondents shall pay, either by certified check or electronically by Fedwire, a civil penalty in the amount of **Seven Thousand Five Hundred Dollars (\$7,500.00)**. Payment shall be received (if made by check) or effected (if implemented by Fedwire) on or before 30 days from the Regional Judicial Officer's signature of the Final Order. If the payment is made by check, then the check shall be made payable to the "Treasurer of the United States of America" and shall be mailed by one of the following two methods:

a. STANDARD DELIVERY

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

b. SIGNED RECEIPT CONFIRMATION DELIVERY (FedEx, DHL, UPS, USPS, Certified, Registered, etc.)

United States Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

The check shall be identified with a notation thereon listing the following: **In the Matter of Modern Day Products, LLC and Mobile Pro Gear, LLC** and shall bear the Docket No. **FIFRA-02-2018-5109.**

If Respondents choose to make payment electronically through Fedwire, Respondents shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when the payment is made:

- a. Amount of payment, **\$7,500.00**
- b. SWIFT address: **FRNUS33, 33 Liberty Street, New York, NY 10045**
- c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
- d. Federal Reserve Bank of New York ABA routing number: **021030004**
- e. Field Tag 4200 of the Fedwire message should read: **“D 68010727 Environmental Protection Agency”**
- f. Name of Respondents: **Modern Day Products, LLC and Mobile Pro Gear, LLC**
- g. Case Docket Number: **FIFRA-02-2018-5109**

10. Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.

11. If timely payment is not received on or before the due date, then Respondents shall also pay the following amounts:

a. Interest: If Respondents fail to make payment on or before the due date, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717 and 26 U.S.C. Section 6621 from the date said payment was required to have been made through the date said payment has been received.

b. Handling Charges: Pursuant to 31 U.S.C. Section 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

c. Attorney Fees, Collection Costs, Nonpayment of Penalty: If Respondents fail to pay the amount of the assessed penalty on time, pursuant to 42 U.S.C. §7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each calendar quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

12. Nothing in this document is intended or shall be construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondents, if Respondents make any material misrepresentations

or provides materially false information herein or in any document submitted pursuant to this Consent Agreement.

13. The civil penalties provided for herein are penalties within the meaning of 26 U.S.C. §162(f), and are not deductible expenditures for purposes of federal, state or local law.

14. Any responses, documentation, and other communication submitted in connection with this Consent Agreement shall be sent to:

Audrey Moore
Pesticides and Toxic Substances Branch – Pesticides Team
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue, Building 205
Edison, NJ 08837

and

Bruce Aber
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty and any nonpayment penalty) to Respondents at the following address:

Manuel Castro, President
Modern Day Products, LLC
Mobile Pro Gear, LLC
5305 Vermella Way
Lyndhurst, New Jersey 07071

15. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and the Respondents Modern Day and Mobile Pro Gear. Full payment of the penalty described in paragraph 9, above, shall only resolve Respondents Modern Day and Mobile Pro Gear's liability for federal civil penalties for the violations and facts described in paragraphs 29 to 34 of the

“Findings of Fact and Conclusions of Law” section in this Consent Agreement. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions against either or both of the Respondents for any violations of law.

16. For the purpose of this proceeding, Respondents admit that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. §136l(a), to commence a civil administrative proceeding based on the Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies any determination in the Findings of Fact and Conclusions of Law contained herein.

17. Respondents have read the Consent Agreement, understand its terms, find it to be reasonable and consents to the issuance and its terms. Respondents consent to the issuance of the accompanying Final Order. Respondents agree that all terms of settlement are set forth herein.

18. Respondents explicitly and knowingly consent to the assessment of the civil penalty as set forth in this Consent Agreement and agree to pay the civil penalty in accordance with the terms of this Consent Agreement.

19. Respondents explicitly and knowingly waive their right to request or to seek any Hearing on the Complaint, this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

20. Respondents agree not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO; or b) to enforce a judgment relating to this CA/FO. Any failure by Respondents to perform fully any requirement herein will be considered a violation of this CA/FO and may subject the Respondents to a civil judicial action by the United States to enforce the provisions of this CA/FO.

21. Respondents waive any right they might have to appeal this Consent Agreement and the accompanying Final Order.

22. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

23. This Consent Agreement and Final Order does not relieve Respondents of their obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

24. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

25. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement and Final Order, and b) he or she is duly and fully authorized to bind the party(ies) on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.


26. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondents, their officers/officials, agents, authorized representatives and successors or assigns.

27. Each party hereto agrees to bear their own costs and fees in this matter.

28. Respondents consent to service upon themselves of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

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RESPONDENT

BY: 
(Signature)


NAME: Manuel Castro

TITLE: President

COMPANY NAME: Modern Day Products, LLC

DATE: 9/13/18

RESPONDENT

BY: 
(Signature)

NAME: Manuel Castro

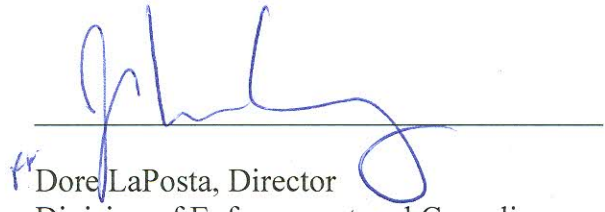
TITLE: President

COMPANY NAME: Mobile Pro Gear, LLC

DATE: 9/13/18

In the Matter of Modern Day Products, LLC and Mobile Pro Gear, LLC, FIFRA-02-2018-5109

COMPLAINANT:

A handwritten signature in blue ink, appearing to be 'Dore LaPosta', is written over a horizontal line.

^{fr} Dore LaPosta, Director
Division of Enforcement and Compliance
Assistance
U.S. Environmental Protection Agency - Region 2

DATE: 9/13/18

In the Matter of Modern Day Products, LLC & Mobile Pro Gear, LLC, FIFRA-02-2018-5109

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 14 of FIFRA, 7 U.S.C. §136f and 40 C.F.R. §22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: Sept 18, 2018

In the Matter of Modern Day Products, LLC & Mobile Pro Gear, LLC, FIFRA-02-2018-5109

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order (“CA/FO”), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

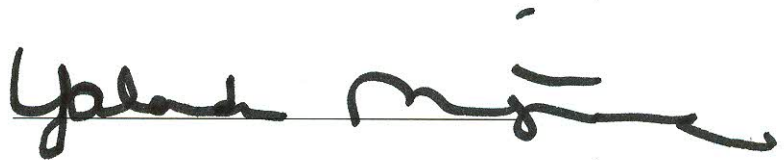
Original and Copy
By Hand Delivery:

Office of the Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Certified Mail/
Return Receipt Requested:

Manuel Castro, President
Modern Day Products, LLC &
Mobile Pro Gear, LLC
5305 Vermella Way
Lyndhurst, New Jersey 07071

Dated: 9/19, 2018
New York, New York

A handwritten signature in black ink, appearing to read "Galen M. Jones", written over a horizontal line.

