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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2022-0066
11)
12 99 Cents Only Stores LLC,) 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)
14

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and 99 Cents
17 Only Stores LLC (“Respondent”) agree to settle this matter and consent to the entry of this
18 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
19 concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
24 of a civil administrative penalty against Respondent for the sale and/or distribution of an
25 unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

26 2. Complainant is the Manager of the Toxics Section in the Enforcement and
27 Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to
28 bring this action and to sign a consent agreement settling this action.

1 3. Respondent is 99 Cents Only Stores LLC, a California limited liability company with
2 headquarter offices located at 4000 Union Pacific Avenue in City of Commerce, California,
3 90023.

4 **B. STATUTORY AND REGULATORY BASIS**

5 4. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it is unlawful
6 for any person to distribute or sell to any person any pesticide that is not registered under Section
7 3 of FIFRA, 7 U.S.C. § 136a.

8 5. Section 2(s) of FIFRA, 7 U.S.C. §136(s), defines a “person” as “any individual,
9 partnership, association, corporation, or any organized group of persons whether incorporated or
10 not.”

11 6. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to
12 mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship,
13 deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to
14 deliver.

15 7. Section 2(u) of FIFRA, 7 U.S.C. §136(u), defines a “pesticide,” in part, as any
16 substance or mixture of substances intended for preventing, destroying, repelling, or mitigating
17 any pest.

18 8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent,
19 nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus,
20 bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in
21 living man or other living animals) which the Administrator declares to be a pest under Section
22 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

23 **C. ALLEGED VIOLATIONS**

24 9. At all times relevant to this CAFO, Respondent was a limited liability company and
25 therefore a “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as
26 such is subject to FIFRA and the regulations promulgated thereunder.

27 10. At all times relevant to this CAFO, Respondent “distributed or sold” the products,
28 “Bref Densiclolor,” “Momentum Brands Disinfectant Wipes,” and “Alchemy Living Multi-

1 Surface Cleaner” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to
2 persons in the United States.

3 11. At all times relevant to this CAFO, the labeling for the product, “Bref Densicloro,”
4 bore numerous pesticidal claims including “maximum disinfection” and “kills 99% of germs and
5 bacteria.” “Bref Densicloro” is thus a substance intended for use as a germicide and bactericide
6 and is therefore a “pesticide,” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. §
7 136(u).

8 12. From November 2020 to June 2021, Respondent “distributed or sold” as that term is
9 defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide, “Bref Densicloro,” to
10 persons in the United States on 394 separate occasions from 113 of its stores located in
11 California, Arizona, and Nevada.

12 13. At all times relevant to this CAFO, the pesticide, “Bref Densicloro,” that Respondent
13 “distributed or sold” on 394 separate occasions from 113 of its stores located in California,
14 Arizona, and Nevada was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

15 14. By distributing or selling the unregistered pesticide, “Bref Densicloro,” on 394
16 separate occasions from November 2020 to June 2021 from 113 of its stores located in
17 California, Arizona, and Nevada, Respondent committed 394 violations of Section 12(a)(1)(A) of
18 FIFRA, 7 U.S.C. § 136j(a)(1)(A).

19 15. At all times relevant to this CAFO, the labeling for the product, “Momentum Brands
20 Disinfectant Wipes,” bore numerous pesticidal claims including “kills 99% of viruses and
21 bacteria” and “uses: wipes to sanitize surfaces.” “Momentum Brands Disinfectant Wipes” is
22 thus a substance intended for use as a bactericide and virucide and is therefore a “pesticide,” as
23 that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24 16. On or about October 16, 2020, Respondent “distributed or sold” as that term is
25 defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide, “Momentum Brands
26 Disinfectant Wipes,” by holding and offering it for sale from its Murrieta, California store.

27 17. At all times relevant to this CAFO, the pesticide, “Momentum Brands Disinfectant
28 Wipes,” that Respondent “distributed or sold” on or about October 16, 2020 from its Murrieta,

1 California store was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

2 18. By distributing or selling the unregistered pesticide, “Momentum Brands Disinfectant
3 Wipes,” on or about October 16, 2020 from its Murrieta, California store, Respondent committed
4 one violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

5 19. At all times relevant to this CAFO, the labeling for the product, “Alchemy Living
6 Multi-Surface Cleaner,” bore numerous pesticidal claims including “kills 99% of bacteria.”
7 “Alchemy Living Multi-Surface Cleaner” is thus a substance intended for use as a bactericide
8 and is therefore a “pesticide,” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. §
9 136(u).

10 20. On or about October 16, 2020, Respondent “distributed or sold” as that term is
11 defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide, “Alchemy Living Multi-
12 Surface Cleaner,” by holding and offering it for sale from its Murrieta, California store.

13 21. At all times relevant to this CAFO, the pesticide, “Alchemy Living Multi-Surface
14 Cleaner,” that Respondent “distributed or sold” on or about October 16, 2020 from its Murrieta,
15 California store was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

16 22. By distributing or selling the unregistered pesticide, “Alchemy Living Multi-Surface
17 Cleaner,” on or about October 16, 2020 from its Murrieta, California store, Respondent
18 committed one violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

19 23. The Administrator of EPA may assess a civil penalty against any registrant,
20 commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any
21 provision of FIFRA of up to \$21,805 for each offense that occurred after November 2, 2015
22 where penalties are assessed on or after January 12, 2022. See Section 14(a)(1) of FIFRA, 7
23 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at
24 87 Fed. Reg. 1676 (January 12, 2022).

25 **D. RESPONDENT’S ADMISSIONS**

26 24. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
27 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
28 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section

1 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
2 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
3 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
4 proposed Final Order contained in this CAFO.

5 **E. CIVIL ADMINISTRATIVE PENALTY**

6 25. In full and final settlement of the violations specifically alleged in Section I.C of this
7 CAFO, Respondent shall pay a civil administrative penalty of SEVEN HUNDRED AND FIFTY-
8 ONE THOUSAND AND FIFTY-FIVE DOLLARS (\$751,055). Respondent shall pay this civil
9 penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid
10 by remitting a certified or cashier's check, including the name and docket number of this case,
11 for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other
12 methods listed below) and sent as follows:

13 **Regular Mail:**

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

19 **Wire Transfers:**

20 Wire transfers must be sent directly to the Federal Reserve Bank in New
21 York City with the following information:
22 Federal Reserve Bank of New York
23 ABA = 021030004
24 Account = 68010727
25 SWIFT address = FRNYUS33
26 33 Liberty Street
27 New York, NY 10045
28 Beneficiary = U.S. Environmental Protection Agency

Certified or Overnight Mail:

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

1 ACH (also known as Remittance Express or REX):

2 Automated Clearinghouse (ACH) payments to EPA can be made through
3 the U.S. Treasury using the following information:

4 U.S. Treasury REX/Cashlink ACH Receiver
5 ABA = 051036706
6 Account = 31006, Environmental Protection Agency
7 CTX Format Transaction Code 22 – checking

8 Physical location of U.S. Treasury facility:

9 5700 Rivertech Court
10 Riverdale, MD 20737

11 Remittance Express (REX) = (866) 234-5681

12 On Line Payment:

13 This payment option can be accessed from the information below:

14 www.pay.gov
15 Enter "SFO 1.1" in the search field
16 Open form and complete required fields

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

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

23 Regional Hearing Clerk
24 Office of Regional Counsel (ORC-1)
25 U.S. Environmental Protection Agency, Region IX
26 75 Hawthorne Street
27 San Francisco, CA 94105
28 R9HearingClerk@epa.gov

 Julie Jordan
 Toxics Section
 Enforcement and Compliance Assurance Division (ENF-1-1)
 U.S. Environmental Protection Agency, Region IX
 75 Hawthorne Street
 San Francisco, CA 94105
 jordan.julie@epa.gov

26. Respondent shall not use payment of any penalty under this CAFO as a tax deduction

1 from Respondent's federal, state, or local taxes, nor shall Respondent allow or otherwise
2 facilitate any other person to use such payment as a tax deduction.

3 27. If Respondent fails to pay the assessed civil administrative penalty of SEVEN
4 HUNDRED AND FIFTY-ONE THOUSAND AND FIFTY-FIVE DOLLARS (\$751,055) as
5 identified in Paragraph 25, by the deadline specified in that Paragraph, then Respondent shall pay
6 a stipulated penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the
7 assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all
8 accrued stipulated penalties are paid and shall become due and payable upon EPA's written
9 request. Failure to pay the civil administrative penalty specified in Paragraph 25 by the deadline
10 specified in that Paragraph may also lead to any or all of the following actions:

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

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

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

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

28 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §

1 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
2 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
3 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
4 (30) days of the effective date of this CAFO.

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

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

12 **F. CERTIFICATION OF COMPLIANCE**

13 28. In executing this CAFO, Respondent certifies that the information it has supplied
14 concerning this matter was at the time of submission, and is at the time of signature to this
15 CAFO, truthful, accurate, and complete; and that Respondent does not presently distribute or sell
16 the products identified in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or
17 misleading information can result in significant penalties, including the possibility of fines and
18 imprisonment for knowing submission of such information.

19 **G. RETENTION OF RIGHTS**

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

28 30. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's

1 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
2 and permits.

3 **H. ATTORNEYS' FEES AND COSTS**

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

6 **I. EFFECTIVE DATE**

7 32. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
8 *effective on the date* that the Final Order contained in this CAFO, having been approved and
9 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

10 **J. BINDING EFFECT**

11 33. The undersigned representative of Complainant and the undersigned representative of
12 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
13 of this CAFO and to bind the party he or she represents to this CAFO.

14 34. The provisions of this CAFO shall apply to and be binding upon Respondent and its
15 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
16 and assigns.

17
18 FOR RESPONDENT 99 CENTS ONLY STORES LLC:

19 7/1/22
20 DATE

21 
22 MARY M. KASPER
23 Chief Legal Officer, General Counsel, and Secretary
24 99 Cents Only Stores LLC
25 4000 Union Pacific Avenue
26 City of Commerce, CA 90023

27 FOR COMPLAINANT EPA:

28 7/18/2022
DATE

MATTHEW SALAZAR
Digitally signed by MATTHEW SALAZAR
Date: 2022.07.18 16:32:43 -0700
MATT SALAZAR, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and 99 Cents Only Stores LLC having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2022- 0066) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of SEVEN
6 HUNDRED AND FIFTY-ONE THOUSAND AND FIFTY-FIVE DOLLARS (\$751,055) and
7 comply with the terms and conditions set forth in the Consent Agreement.

8
9 STEVEN JAWGIEL

Digitally signed by STEVEN
JAWGIEL
Date: 2022.07.22 05:07:48 -07'00'

10 DATE

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

CERTIFICATE OF SERVICE

This is to certify that the CONSENT AGREEMENT AND FINAL ORDER in the matter of 99 Cents Only Stores, LLC (FIFRA-09-2022-0066), has been filed with the Regional Hearing Clerk, and a copy was served by e-mail on Respondent, Counsel for Respondent and Counsel for Complainant, as indicated below:

RESPONDENT (by e-mail)

Mary M. Kasper, Chief Legal Officer
General Counsel and Secretary
99 Cents Only Stores LLC
4000 Union Pacific Avenue
City of Commerce, CA 90023
mary.kasper@99only.com

COUNSEL FOR RESPONDENT (by e-mail)

Dale A. Stern
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
dstern@DowneyBrand.com

COUNSEL FOR COMPLAINANT (by e-mail)

Edgar Coral
Assistant Regional Counsel
U.S. EPA - Region 9
Coral.Edgar@epa.gov

Date Filed: _____, 2022

Regional Hearing Clerk
EPA, Region 9