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****FILED****
03 NOV 2021
U.S. EPA - REGION IX

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13 **UNITED STATES**
14 **ENVIRONMENTAL PROTECTION AGENCY**
15 **REGION IX**
16 **75 HAWTHORNE STREET**
17 **SAN FRANCISCO, CA 94105**

18
19 In the matter of:)
20) U.S. EPA Docket No. FIFRA-09-2022-0002
21 Welcome Market, Inc.)
22 d/b/a) **CONSENT AGREEMENT**
23 99 Ranch Market) and
24) **FINAL ORDER PURSUANT TO**
25 Respondent.) **SECTIONS 22.13 AND 22.18**
26)
27)

28 **I. CONSENT AGREEMENT**

29 The United States Environmental Protection Agency (“EPA”) and Welcome Market, Inc.,
30 doing business as 99 Ranch Market (“Respondent”) agree to settle this matter and consent to the
31 entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously
32 initiates and concludes this proceeding in accordance with 40 C.F.R. §§22.13(b) and 22.18(b).

33 **A. AUTHORITY AND PARTIES**

34 1. This administrative proceeding for the assessment of a civil administrative penalty
35 is initiated pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7
36 U.S.C. § 136, *et seq.* (hereinafter referred to as “FIFRA” or the “Act”), and the Consolidated
37 Rules of Practice Governing the Administrative Assessment of Civil Penalties and the
38 Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

39 2. Complainant is the Manager of the Toxics Section of the Enforcement and
40 Compliance Assurance Division, EPA Region IX, who has been duly delegated to commence

1 and settle an enforcement action in this matter.

2 3. Respondent is a California corporation headquartered in Union City, California
3 and with facilities and businesses in California.

4 **B. STATUTORY AND REGULATORY AUTHORITIES**

5 4. Under section 2(s) of FIFRA, 7 U.S.C. §136 s), a person is “any individual,
6 partnership, association, corporation, or any organized group of persons whether incorporated or
7 not.”

8 5. Under section 2(u) of FIFRA, 7 U.S.C. §136(u), a pesticide is, among other
9 things, “any substance or mixture of substances intended for preventing, destroying, repelling, or
10 mitigating any pest.”

11 6. The term “pest” includes (1) any insect, rodent, nematode, fungus, weed, or (2)
12 any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-
13 organism (except viruses, bacteria, or other micro-organisms on or in living man or other living
14 animals) which the Administrator declares to be a pest under FIFRA section 25(c)(1). Section
15 2(t) of FIFRA, 7 U.S.C. §136(t).

16 7. The term “to distribute or sell” means to distribute, sell, offer for sale, hold for
17 distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or
18 receive and (having so received) deliver or offer to deliver. Section 2(gg) of FIFRA, 7 U.S.C. §
19 136(gg).

20 *Unregistered Pesticide*

21 8. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful
22 for any person in any State to distribute or sell to any person any pesticide that is not registered
23 under the Act. See also 40 C.F.R. 152.15, which also provides that no person may distribute or
24 sell any pesticide that is not registered under the Act, with certain exceptions not applicable here.

25 *Penalty*

26 9. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other
27 distributor who violates any provision of the Act may be assessed a civil penalty of not more
28 than \$20,528 for violations that occurred after November 2, 2015 and are assessed on or after
29 December 23, 2020. Section 14(a)(1) of the Act, 7 U.S.C. § 136l(a)(1), as amended by the Civil
30 Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

C. COMPLAINANT’S ALLEGATIONS

Complainant alleges:

10. Respondent is a “person” as that term is 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.

11. Respondent is a retailer.

12. EPA Inspectors conducted an inspection of the 99 Ranch Market at 1795 Willow Pass Road, Concord, California on or about March 30, 2021.

13. At the time of the inspection, Respondent was offering for sale G-Sol Antibacterial spray.

14. At all times relevant to this action, G-Sol Antibacterial spray is labeled as follows:

A. The front label states “Flu & Corona Anti Bacterial 99.9% Disinfectant Spray.”

B. The back label lists benefits that include “Extermination of 99.9% of harmful bacteria and virus, such as SARS/Coronavirus.”

C. The back label contains instructions for use on surfaces, including use on disposable masks and to “[r]inse toys and food contact surfaces with water after use.”

D. The back label states “Ingredients: Colloidal silver, Titanium Dioxide, Surfactant, Dispersing Agent, Stabilizer, DI Water.”

E. The label contains neither a product registration number nor producing establishment number.

15. Bacteria and virus, including coronavirus such as the one that cause severe acute respiratory syndrome (SARS) and the SARS-CoV-2 coronavirus that causes COVID-19, are “pests” and G-Sol Antibacterial spray is a “pesticide” as those terms are defined by FIFRA.

16. G-Sol Antibacterial spray is not a registered pesticide under the Act.

17. On or about March 30, 2021, Respondent violated section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by offering for sale an unregistered pesticide, G-Sol Antibacterial.

18. Between September 30, 2020 and March 29, 2021 Respondent sold G-Sol Antibacterial spray to twenty-eight customers. On each of these twenty-eight occasions, Respondent “distributed or sold” G-Sol Antibacterial as the term “to distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg). In each of these twenty-eight instances,

1 Respondent violated section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or
2 selling an unregistered pesticide.

3 **D. RESPONDENTS' ADMISSIONS**

4 19. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this
5 proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this
6 CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations
7 contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this
8 CAFO, (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty
9 under Section I.E of this CAFO; (v) waives any right to contest the allegations contained in
10 Section I.C of this CAFO; and (vi) waives the right to appeal the proposed final order contained
11 in this CAFO.

12 **E. CIVIL ADMINISTRATIVE PENALTY**

13 20. Respondent consents to the assessment of a civil administrative penalty in the
14 amount of **TWO HUNDRED AND SIX THOUSAND AND EIGHT HUNDRED AND FIVE**
15 **DOLLARS (\$ 206,805)** as final settlement and complete satisfaction of the civil claims against
16 Respondent arising from the facts alleged in Section I.C of the CAFO and under the Act.

17 a. Respondent shall pay the civil penalty within thirty (30) days of the effective
18 date of this CAFO by one of the methods listed below:

- 19 i. Respondent may pay online through the Department of the Treasury
20 website at www.pay.gov. In the Search Public Form field, enter SFO 1.1,
21 click EPA Miscellaneous Payments - Cincinnati Finance Center, and
22 complete the SFO Form Number 1.1.
23
24 ii. Respondent may also pay the civil penalty using any method, or
25 combination of methods, provided on the following website:
26

27 <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>
28

29 If clarification regarding a particular method of payment remittance is needed,
30 contact the EPA's Cincinnati Finance Center at (513) 487-2091.
31

32 b. Respondent shall identify payment with the name and docket number of this
33 case; and

34 c. Within 24 hours of payment, Respondent shall provide EPA with proof of
35 payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit

1 card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any
2 other information required to demonstrate that payment has been made according to EPA
3 requirements, in the amount due, and identified with the name and docket number of this case),
4 including proof of the date payment was made, along with a transmittal letter, indicating
5 Respondent's names, the case title, and docket number, to the following addresses:

6 Regional Hearing Clerk
7 U.S. EPA, Region IX
8 r9HearingClerk@epa.gov
9

10 Ashley Mrzljak
11 Toxics Section
12 Enforcement and Compliance Assurance Division
13 U.S. EPA, Region IX
14 Mrzljak.Ashley@epa.gov
15

16 21. In the event that Respondent fails to pay the civil administrative penalty assessed
17 above by the due date, Respondent shall pay to EPA a stipulated penalty in the amount of **FIVE**
18 **HUNDRED DOLLARS (\$500)** for each day that payment is late in addition to the unpaid
19 balance of the penalty assessed above. Upon EPA's written demand, this stipulated penalty shall
20 immediately become due and payable.

21 22. If Respondent fails to pay the penalty assessed by this CAFO in full by the date
22 specified in Paragraph **20**, the entire unpaid balance and accrued interest shall become
23 immediately due and owing. Respondent's tax identification numbers may be used for collecting
24 or reporting any delinquent monetary obligation arising from this CAFO (see 31 U.S.C. § 7701).
25 If payment is not received in full by the date specified in Paragraph **20**, interest, penalty and
26 administrative costs will accrue from the effective date of this CAFO as described at 40 CFR
27 §13.11. In addition, if this matter is referred to another department or agency (e.g., the
28 Department of Justice, the Internal Revenue Service), that department or agency may assess its
29 own administrative costs, in addition to EPA's administrative costs, for handling and collecting
30 Respondent's overdue debt. Respondent's failure to pay in full the civil administrative penalty by
31 its due date also may also lead to any or all of the following actions:

32 a. The debt being referred to a credit reporting agency, a collection agency, or to
33 the Department of Justice for filing of a collection action in the appropriate United States District
34 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,

1 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

2 b. The debt being collected by administrative offset (i.e., the withholding of
3 money payable by the United States to, or held by the United States for, a person to satisfy the
4 debt the person owes the Government), which includes, but is not limited to, referral to the
5 Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C
6 and H.

7 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)
8 suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA
9 sponsors or funds; (iii) convert the method of payment under a grant or contract from an
10 advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-
11 of-credit. 40 C.F.R. §§ 13.17.

12 **F. RESPONDENT CERTIFICATION**

13 23. 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 has corrected the violations alleged
16 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading
17 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, BINDING EFFECT, ETC.**

20 24. This Consent Agreement constitutes the entire agreement between the Respondent
21 and EPA. Full payment of the civil penalty and any applicable interest charges or late fees or
22 penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty
23 liability against Respondent for the violations alleged in Section I.C of this CAFO.

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

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

4 26. Except as set forth in Paragraph 22 above, EPA and Respondent shall each bear
5 its own fees, costs, and disbursements in this action.

6 27. For the purposes of state and federal income taxation, Respondent shall not claim
7 a deduction for any civil penalty payment made pursuant to this CAFO.

8 28. This CAFO constitutes an enforcement action for purposes of considering
9 Respondent's compliance history in any subsequent enforcement action. This CAFO will be
10 available to the public and does not contain any confidential business information.

11 29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of
12 this CAFO shall be the date on which the accompanying Final Order, having been signed by the
13 Regional Judicial Officer, is filed.

14 30. The provisions of this CAFO shall be binding on Respondent and on
15 Respondent's officers, directors, employees, agents, servants, authorized representatives,
16 successors, and assigns.

17 31. The undersigned representatives of each party to this Consent Agreement certify
18 that each is duly authorized by the party whom he or she represents to enter into the terms and
19 conditions of this Consent Agreement and Final Order and bind that party to it.

20
21 Welcome Market, Inc., doing business as 99 Ranch Market:

22
23 Date: 10/13/2021 By: 

24
25
26 Name: David Lee

27
28
29 Title: COO

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

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3
4
5 Date: 10/28/2021 By:

MATTHEW
SALAZAR

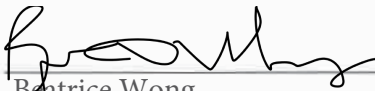
Digitally signed by
MATTHEW SALAZAR
Date: 2021.10.28 16:19:47
-07'00'

6 MATT SALAZAR
7 Manager, Toxics Section
8 Enforcement and Compliance Assurance Division
9 U.S. Environmental Protection Agency,
10 Region IX
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1 **II. FINAL ORDER**

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3 IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket
4 No. FIFRA-09-2022-0002) be entered and that Respondent shall pay a civil administrative
5 penalty in the amount of **TWO HUNDRED AND SIX THOUSAND AND EIGHT**
6 **HUNDRED AND FIVE DOLLARS (\$ 206,805)** plus interest in accordance with the terms of
7 this Consent Agreement and Final Order.

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10
11 Date: November 3, 2021


12 Beatrice Wong
13 Regional Judicial Officer
14 U.S. EPA, Region IX

CERTIFICATE OF SERVICE

This is to certify that the fully executed Consent Agreement and Final Order in the matter of Welcome Market Inc. d/b/a 99 Ranch Market (Docket No. FIFRA-09-2022-0002) was filed with the Regional Hearing Clerk and a true and correct copy of the same was sent to the following parties:

FOR RESPONDENT:

(Via Electronic Mail)

Jonson Chen, Director
Welcome Market, Inc. d/b/a 99 Ranch Market
2931 Faber Street Union City, California 94587
rogerc@tawa.com

David Lee, COO
Welcome Market, Inc. d/b/a 99 Ranch Market
davidlee@tawa.com

Jeremy N. Jungreis, Esq.
Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
jjungreis@rutan.com

FOR COMPLAINANT:

(Via Electronic Mail)

Margaret Alkon
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
Alkon.Margaret@epa.gov

Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX

Date