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6 U.S. Environmental Protection Agency
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** FILED **
U.S.EPA - Region 09

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

18 In the matter of:) Docket No. FIFRA-09-2016- 0017
19) CONSENT AGREEMENT
20 WellPlant, Inc.)
21 and) and
22 GST International, Inc.)
23) FINAL ORDER PURSUANT TO
24 Respondents.) SECTIONS 22.13 AND 22.18
25)
26
27

28 **I. CONSENT AGREEMENT**

29 The United States Environmental Protection Agency (“EPA”), WellPlant, Inc.
30 (“WellPlant”) and GST International, Inc. (“GSTII” and together with WellPlant the
31 “Respondents”) agree to settle this matter and consent to the entry of this Consent Agreement
32 and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this proceeding in
33 accordance with 40 C.F.R. §§22.13(b) and 22.18(b).

34 **A. AUTHORITY AND PARTIES**

35 1. This administrative proceeding for the assessment of a civil administrative penalty is
36 initiated pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7

1 U.S.C. § 136, et seq. (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated
2 Rules of Practice Governing the Administrative Assessment of Civil Penalties and the
3 Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

4 2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has
5 been duly delegated to commence and settle an enforcement action in this matter.

6 3. WellPlant Inc. is a Nevada corporation with an office or business at 855 E Greg Street,
7 #103, Sparks Nevada.

8 4. GST International, Inc. is a Nevada corporation with offices located at 855 E Greg
9 Street, #103, Sparks Nevada.

10 **B. STATUTORY AND REGULATORY AUTHORITIES**

11 5. Under section 2(s) of FIFRA, 7 U.S.C. §136(s), the term "person" means "any
12 individual, partnership, association, corporation, or any organized group of persons whether
13 incorporated or not."

14 6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be
15 unlawful for any person to distribute or sell to any person any pesticide that is not registered
16 under section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or
17 suspended, except to the extent that distribution or sale otherwise has been authorized by the
18 Administrator under this subchapter.

19 7. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any
20 person to distribute or sell to any person any pesticide that is misbranded.

21 8. Under Section 2(q) of FIFRA, 7 U.S.C. § 136(q), a pesticide is "misbranded" if "the
22 label does not bear an ingredient statement..." or if "any word, statement, or other information

1 required by or under the authority of [FIFRA] to appear on the label or labeling is not
2 prominently placed thereon..." 7 U.S.C. §§ 136(q)(1)(E) and 136(q)(2)(A). A pesticide is also
3 misbranded if its labeling bears any statement, design, or graphic representation, relative thereto
4 or to its ingredients which is false or misleading in any particular. Section 2(q)(1)(A) of FIFRA,
5 7 U.S.C. § 136(q)(1)(A).

6 9. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines "labeling" in part, as "all labels and
7 all other written, printed, or graphic matter . . . accompanying the pesticide or device at any
8 time," and defines "label" as "the written, printed, or graphic matter on, or attached to, the
9 pesticide or device or any of its containers or wrappers."

10 10. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) states that the term "to distribute or sell"
11 means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment,
12 ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or
13 offer to deliver.

14 11. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), states that the term "pesticide" means any
15 substance or mixture of substances intended for preventing, destroying, repelling, or mitigating
16 any pest.

17 12. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), states that the term "pest" means (1) any
18 insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or
19 animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-
20 organisms on or in living man or other living animals) which the Administrator declares to be a
21 pest under FIFRA section 25(c)(1). Pursuant to the authority in section 25(c)(1) of FIFRA, 7
22 U.S.C. § 136w(c)(1), the Administrator declared that a pest includes "any plant growing where

1 not wanted, including any moss, alga, liverwort..." and "[a]ny fungus..., except for those on or
2 in living man or other living animals and those on or in processed food or processed animal feed,
3 beverages, drugs . . . and cosmetics. . . ." 40 C.F.R. § 152.5.

4 13. EPA has promulgated regulations setting forth procedures, requirements and criteria
5 concerning the registration of pesticide products under FIFRA section 3, found at 40 CFR Part
6 152 ("Pesticide Registration Regulations"). EPA has also promulgated regulations setting forth
7 labeling requirements for pesticides, found at 40 CFR Part 156 ("Labeling Regulations").

8 14. Products that are intended to exclude pests only by providing a physical barrier
9 against pest access, and which contain no toxicants, such as certain pruning paints to trees, are
10 not considered to be pesticides unless a pesticide claim is made on their labeling or in connection
11 with their sale and distribution. 40 C.F.R. §152.10.

12 15. The Labeling Regulations require every pesticide to bear a label containing an
13 ingredient statement "which contains the name and percentage by weight of each active
14 ingredient, the total percentage by weight of all inert ingredients..." as required by 40 CFR §
15 156.10(g) and the name and address of the person for whom produced as prescribed by 40 CFR §
16 156.10(c), which states "if the name of the person for whom the pesticide was produced appears
17 on the label, it must be qualified by appropriate wording such as "Packed for***" "Distributed
18 by***" or "Sold by***" to show that the name is not that of the producer."

19 16. A pesticide is misbranded if its labeling is false or misleading in any particular
20 including both pesticidal and non-pesticidal claims. Examples of statements or representations in
21 the labeling which constitute misbranding include: A true statement used in such a way as to give
22 a false or misleading impression to the purchaser; Label disclaimers which negate or detract from



1 labeling statements required under the Act and these regulations; Claims as to the safety of the
2 pesticide or its ingredients, including statements such as “safe,” “nonpoisonous,” “noninjurious,”
3 “harmless” or “nontoxic to humans and pets” with or without such a qualifying phrase as “when
4 used as directed”; and non-numerical and/or comparative statements on the safety of the product.
5 40 CFR § 156.10 (a)(5).

6 C. COMPLAINANT’S ALLEGATIONS

7 Complainant alleges:

8 17. Respondents are each and together a “person” as that term is defined by section 2(s)
9 of FIFRA, 7 U.S.C. § 136(s), and as such are subject to FIFRA and the regulations promulgated
10 thereunder.

11 18. At all times relevant to this CAFO, Respondents have a facility located at 855 E Greg
12 Street, #103, Sparks Nevada.

13 19. On August 19, 2015, an Inspector from the Nevada Department of Agriculture
14 conducted an inspection of the facility at 855 E Greg Street, #103, Sparks Nevada.

15 20. At all times relevant to this CAFO, Respondents distributed or sold a product called
16 Mold Manager (hereafter, “Mold Manager”).

17 21. At all times relevant to this CAFO, the label of Mold Manager states that Mold
18 Manager “PREVENTS THE GROWTH & REGROWTH OF MOLD, MILDEW, ALGAE &
19 MOSS FOR ONE FULL YEAR ON MOST HARD SURFACES!”

20 22. The statement that a product prevents the growth and regrowth of mold, mildew,
21 algae & moss is a pesticidal claim.

22 23. At all times relevant to this CAFO, Mold Manager is a pesticide.

1 24. Mold Manager is not a registered pesticide.

2 25. In forty-eight (48) instances from on or about February 5, 2014 to on or about
3 November 18, 2015, Respondents distributed or sold Mold Manager (including Mold Manager
4 Concentrate and Mold Manager Ready to Use) to numerous persons in the United States. In each
5 of these forty-eight instances, Respondents violated section 12(a)(1)(A) of FIFRA, 7 U.S.C. §
6 136j(a)(1)(A), by distributing or selling an unregistered product.

7 26. Mold Manager does not bear a label containing an ingredient statement as required
8 by 40 C.F.R. § 156.10(g).

9 27. The name and address of WellPlant on the Mold Manager label is not qualified by
10 appropriate wording as prescribed by 40 CFR § 156.10(c) such as “Packed for***” “Distributed
11 by***” or “Sold by***” to show that the name “WellPlant” is not that of the producer.

12 28. The Mold Manager label contains the statement “It is a violation of Federal Law to
13 use this product in a manner inconsistent with its labeling.” This language gives a false or
14 misleading impression to the purchaser that Mold Manger is registered and EPA has approved
15 the label. Thus, the Mold Manager label contains a false or misleading statement.

16 29. Mold Manager is “misbranded” as that term is defined by Section 2(q) of FIFRA, 7
17 U.S.C. § 136(q). In forty-eight (48) instances from on or about February 5, 2014 to on or about
18 November 18, 2015, Respondents distributed or sold Mold Manager (including Mold Manager
19 Concentrate and Mold Manager Ready to Use) to numerous persons in the United States. In each
20 of these forty-eight instances, Respondents violated section 12(a)(1)(E) of FIFRA, 7 U.S.C. §
21 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

1 **D. RESPONDENTS' ADMISSIONS**

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

9 **E. CIVIL ADMINISTRATIVE PENALTY**

10 31. Respondents consent to the assessment of a joint and severable civil administrative
11 penalty in the amount of **TWELVE THOUSAND DOLLARS (\$12,000)** as final settlement and
12 complete satisfaction of the civil claims against Respondents arising from the facts alleged in
13 Section I.C of the CAFO and under the Act.

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

- 16
- 17 i. Respondents may pay online through the Department of the Treasury
18 website at www.pay.gov. In the Search Public Form field, enter SFO 1.1,
19 click EPA Miscellaneous Payments - Cincinnati Finance Center, and
20 complete the SFO Form Number 1.1.
- 21
- 22 ii. Respondents may pay by remitting a certified or cashier's check, including
23 the name and docket number of this case, for the amount, payable to
24 "Treasurer, United States of America," and sent as follows:
25

1 Regular Mail:

2 U.S. Environmental Protection Agency
3 PO Box 979077
4 St. Louis, MO 63197-9000

5
6 Overnight/Signed Receipt Confirmation Mail:

7 U.S. Environmental Protection Agency
8 ATTN Box 979077
9 1005 Convention Plaza
10 Mail Station SL-MO-C2GL
11 St. Louis, MO 63101

- 12
13 iii. Respondents may also pay the civil penalty using any method, or
14 combination of methods, provided on the following website:

15
16 <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

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

- 20
21 b. Respondents shall identify each and every payment with the name and docket

22 number of this case; and

- 23 c. Within 24 hours of payment, Respondents shall provide EPA with proof of
24 payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit
25 card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any
26 other information required to demonstrate that payment has been made according to EPA
27 requirements, in the amount due, and identified with the name and docket number of this case),
28 including proof of the date payment was made, along with a transmittal letter, indicating
29 Respondent's names, the case title, and docket number, to the following addresses:

30 Regional Hearing Clerk
31 Office of Regional Counsel (ORC-1)
32 U.S. Environmental Protection Agency, Region IX
33 75 Hawthorne Street
34 San Francisco, CA 94105
35

29

1 Scott McWhorter
2 Enforcement Division (ENF 3-3)
3 U.S. Environmental Protection Agency, Region IX
4 75 Hawthorne Street
5 San Francisco, CA 94105
6

7 32. In the event that Respondents fail to pay the civil administrative penalty assessed
8 above by its due date, Respondents shall pay to EPA a stipulated penalty in the amount of **FIVE**
9 **HUNDRED DOLLARS (\$500)** for each day that payment is late in addition to the unpaid
10 balance of the penalty assessed above. Upon EPA's written demand, this stipulated penalty shall
11 immediately become due and payable.

12 33. If Respondents fail to pay the penalty assessed by this CAFO in full by its due date,
13 the entire unpaid balance and accrued interest shall become immediately due and owing.

14 Respondents' tax identification numbers may be used for collecting or reporting any delinquent
15 monetary obligation arising from this CAFO (see 31 U.S.C. § 7701). If payment is not received
16 within thirty (30) calendar days, interest, penalty and administrative costs will accrue from the
17 effective date of this CAFO as described at 40 CFR §13.11. In addition, if this matter is referred
18 to another department or agency (e.g., the Department of Justice, the Internal Revenue Service),
19 that department or agency may assess its own administrative costs, in addition to EPA's
20 administrative costs, for handling and collecting Respondents' overdue debt. Respondents'
21 failure to pay in full the civil administrative penalty by its due date also may also lead to any or
22 all of the following actions:

23 a. The debt being referred to a credit reporting agency, a collection agency, or to
24 the Department of Justice for filing of a collection action in the appropriate United States District
25 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 Respondents' licenses or other privileges; (ii)
8 suspend or disqualify Respondents 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. CERTIFICATION OF COMPLIANCE**

13 34. In executing this CAFO, each Respondent certifies that the information it has
14 supplied concerning this matter was at the time of submission, and is at the time of signature to
15 this CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations
16 alleged 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 35. This Consent Agreement constitutes the entire agreement between the Respondents
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

1 liability against Respondents for the violations alleged in Section I.C of this CAFO.

2 36. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondents'
3 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
4 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
5 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
6 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
7 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
8 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
9 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.
10 This CAFO does not exempt, relieve, modify, or affect in any way Respondents' duties to
11 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
12 permits.

13 37. Except as set forth in Paragraph 33 above, EPA and Respondents shall each bear its
14 own fees, costs, and disbursements in this action.

15 38. For the purposes of state and federal income taxation, Respondents shall not claim a
16 deduction for any civil penalty payment made pursuant to this CAFO.


17 39. This CAFO constitutes an enforcement action for purposes of considering
18 Respondents' compliance history in any subsequent enforcement action. This CAFO will be
19 available to the public and does not contain any confidential business information.

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


1 41. The provisions of this CAFO shall be binding on Respondents and on Respondents'
2 officers, directors, employees, agents, servants, authorized representatives, successors, and
3 assigns.

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

7
8
9 **WELLPLANT, INC.:**

10
11
12 Date: 5/23/16 By: 
13
14 Name: JAMES GUESSNER
15
16
17 Title: PRESIDENT
18
19

20
21 **GST INTERNATIONAL, INC.:**

22
23
24 Date: 5/23/16 By: 
25
26 Name: JAMES GUESSNER
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28
29 Title: PRESIDENT
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 6/22/16 By: 

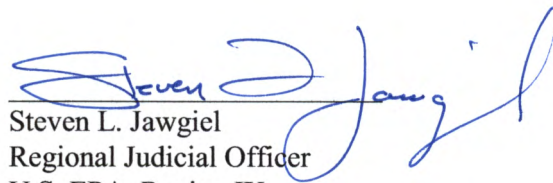
KATHLEEN H. JOHNSON
Director
Enforcement Division
U.S. Environmental Protection Agency,
Region IX

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1 **II. FINAL ORDER**

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3 IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and
4 that Respondents shall pay a civil administrative penalty in the amount of **TWELVE**
5 **THOUSAND DOLLARS (\$12,000)** in accordance with the terms set forth in the Consent
6 Agreement.

7
8
9
10 Date: 06/23/16

11 
12 Steven L. Jawgiel
13 Regional Judicial Officer
14 U.S. EPA, Region IX
15

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2016-0017) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Jim Glessner
President, WellPlant, Inc.
President, GST International, Inc.
994 Packer Way
Sparks, NV 89431

CERTIFIED MAIL NUMBER: 7015 3010 0000 3883 6045

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

Margaret Alkon
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



FER: _____
Regional Hearing Clerk
U.S. EPA, Region IX

6/27/16

Date