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EPA REGION 6

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

In the Matter of	§	
	§	
San Martin Distributing, Inc.,	§	Docket No. FIFRA-06-2025-0370
	§	
	§	
Respondent.	§	

CONSENT AGREEMENT AND FINAL ORDER

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or the "Act"), 7 U.S.C. § 136l, and Sections 22.13, 22.18, and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 6 ("EPA"). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division, EPA Region 6, has been delegated the authority to settle civil administrative penalty and compliance proceedings under Section 14(a) of the Act, 7 U.S.C. § 136l(a).

3. San Martin Distributing, Inc. ("San Martin Distributing" or "Respondent") is a corporation doing business in the State of Texas. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement along with the corresponding Final Order hereinafter known together as the "CAFO" without the adjudication of any issues of law or fact herein.

5. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

B. JURISDICTION

6. This CAFO is entered into under Section 14 of the Act, as amended, 7 U.S.C. § 136l, and the Consolidated Rules, 40 C.F.R. Part 22.

7. The Regional Judicial Officer is authorized to ratify this CAFO which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

8. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. STATUTORY AND REGULATORY BACKGROUND

9. Congress enacted FIFRA, 7 U.S.C. 136 *et seq.*, in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution, and use of pesticides in the United States.

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

11. Pursuant to the regulation at 40 C.F.R. § 152.15, in relevant part, no person may distribute or sell any pesticide product that is not registered under the Act, except as provided

in 40 C.F.R. §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide.

Definitions

12. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

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

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” to mean 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.

16. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and the regulation at 40 C.F.R. § 167.3 define “produce” as meaning to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.

17. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and the regulation at 40 C.F.R. § 167.3 define “producer” to mean any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

18. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by administrative order.¹

D. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

19. Respondent is, and at all times referred to herein was, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. Respondent owns and operates a facility that specializes in the wholesale distribution of health and grocery products from international sources located at 8259 Willow Place Dr. S., Houston, Texas 77070 (the “Facility”).

¹ The Administrator may assess an inflation-adjusted civil penalty per day for each violation of FIFRA pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) and 40 C.F.R. § 19.4.

21. Pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g, the EPA conducted an inspection of the Facility on December 17, 2024, to determine Respondent's compliance with FIFRA and the federal regulations promulgated thereunder (the "Inspection").

22. At the time of the Inspection, Respondent was holding for distribution, holding for sale, or holding for shipment, the following products:

- a. Fabuloso Alternativa al Cloro "Fresca Primavera";
- b. Fabuloso Ultra Frescura/Frescura Activa "Fresco Amanecer";
- c. Fabuloso Ultra Frescura/Frescura Activa "Fresca Lavanda";
- d. Fabuloso Ultra Frescura/Frescura Activa "Energia Naranja"; and
- e. Fabuloso Ultra Frescura/Frescura Activa "Mar Fresco"

(the "Products").

23. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u) the Products are considered a pesticide.

24. At the time of the Inspection, Respondent was distributing or selling the products identified above.

E. ALLEGED VIOLATIONS

25. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

26. Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder as stated below.

Claim 1 – The Products

27. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

28. Respondent distributed or sold the Products identified above. The Products were not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, and therefore is violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

F. CONSENT AGREEMENT AND CIVIL PENALTY

General

29. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this CAFO.

30. By signing this CAFO, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any

right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying this CAFO.

31. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty specified herein.

32. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Assessment and Collection

33. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the effect of Respondent's ability to continue business, the gravity of the violations, and other factors as justice may require, EPA has assessed a civil penalty in the amount of \$91,500.00 (the "EPA Penalty"). The EPA Penalty has been determined in accordance with Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and at no time exceeded EPA's statutory authority.

34. Respondent agrees to pay the EPA Penalty within thirty (30) calendar days after the Effective Date of this CAFO. Respondent shall pay the EPA Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

35. When making a payment, Respondent shall:

a. Identify every payment with Respondent's name and the docket number of this Order, Docket No. FIFRA-06-2025-0370. The payment shall also be accompanied by a transmittal letter that shall reference Respondent's name and address, the case name, and docket number FIFRA-06-2025-0370. Respondent's adherence to this request will ensure proper credit is given when penalties are received for Region 6.

b. Concurrently with any payment, email the transmittal letter and proof of payment to the following email addresses:

Justin Mullenix
U.S. EPA Region 6
Mullenix.Justin@epa.gov

Region 6 Hearing Clerk
U.S. EPA Region 6
Vaughn.Lorena@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due.

36. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the EPA Penalty per this CAFO, the entire unpaid

balance of the EPA Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

a. Interest. Interest begins to accrue from the Effective Date. If the EPA Penalty is paid in full within thirty (30) days, interest accrued is waived. If the EPA Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the EPA Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS large corporate underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts.

c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any portion of the EPA Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days.

37. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the EPA Penalty per this CAFO, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.:

a. refer the debt to a credit reporting agency, a collection agency, or request that the Attorney General bring civil action in the appropriate United States District Court (in which the validity, amount, and appropriateness of the assessed penalty and of

this CAFO shall not be subject to review) to secure payment of the debt, which may include the original penalty, enforcement and collection expenses, nonpayment penalty and interest, 7 U.S.C. § 136l(a)(5) and 40 C.F.R. §§ 13.13 and 13.14;

b. collect the above-referenced debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

c. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

Additional Terms of Settlement

38. 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. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

39. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.

40. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information. See 40 C.F.R. Part 2, Subpart B (Confidentiality of Business Information).

41. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

42. By signing this CAFO, Respondent certifies that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

43. By signing this CAFO, the undersigned representative of Respondent certifies that it is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party it represents to this CAFO.

44. Respondent and EPA agree to the use of electronic signatures for this matter. EPA and Respondent consent to service of a final order by email at the following valid email addresses: Cavazos.Christyn@epa.gov (for EPA) and Pablo@sanmartindist.com (for Respondent).

45. Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

46. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement

(including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- i. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- ii. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN; Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at Chalifoux.Jessica@epa.gov within thirty (30) days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- iii. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within thirty

(30) days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

1. Notify EPA's Cincinnati Finance Center of this fact, via email, within thirty (30) days after the Effective Date of this CAFO; and
2. Provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

G. EFFECT OF CONSENT AGREEMENT AND RESERVATION OF RIGHTS

47. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in Sections D and E above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

48. The terms, conditions and requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

49. Penalties paid pursuant to this CAFO shall not be deductible for purposes of Federal, State, and local taxes.

50. Any violation of the included Final Order may result in a civil judicial action for an injunction or civil penalties as provided in Section 14(a) of the Act, 7 U.S.C. § 136l(a) and adjusted for inflation pursuant to 40 C.F.R. Part 19, as well as criminal sanctions as provided in Section 14(a) of the Act, 7 U.S.C. § 136l(b). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

51. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. EPA does not, by its consent to the entry of this CAFO, warrant or aver in any manner that Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of FIFRA, 7 U.S.C. § 136 *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits.

52. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

53. If and to the extent EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

H. EFFECTIVE DATE


54. Respondent and Complainant agree to the issuance of the included Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

The foregoing Consent Agreement in the Matter of San Martin Distributing, Inc., Docket No. FIFRA-06-2025-0370, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

SAN MARTIN DISTRIBUTING, INC.

Date: 07/02/2025


Signature

Pablo Castelan
Print Name

Operations Manager
Title

FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: July 14, 2025


Digitally signed by Seager, Cheryl
Date: 2025.07.14 16:13:33 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

San Martin Distributing, Inc. is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondents' (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

Dated _____

Rucki,
Thomas

Digitally signed by
Rucki, Thomas
Date: 2025.07.15
09:41:31 -04'00'

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

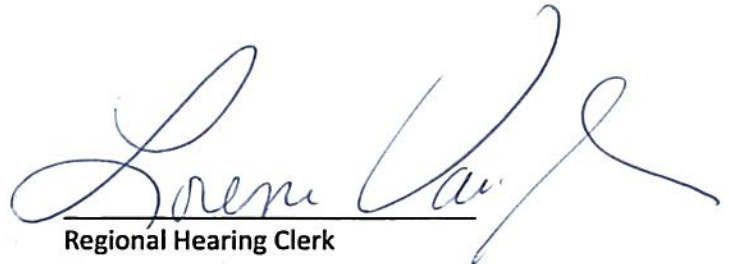
I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to Complainant:

Cavazos.Christyn@epa.gov

Copy via Email to Respondent:

Pablo@sanmartindist.com
Pablo Castelan
San Martin Distributing, Inc.
8259 Willow Place Dr. S.
Houston, Texas 77070



Regional Hearing Clerk
U.S. EPA, Region 6