

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**ZURU, LLC,
228 Nevada Street
El Segundo, CA 90245-4210**

Plaintiff,

v.

**U.S. ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, N.W., Mail Code 1101A
Washington, DC 20460,**

and

**ANDREW R. WHEELER, in his official capacity as,
ADMINISTRATOR OF THE U.S. ENVIRONMENTAL
PROTECTION AGENCY
1200 Pennsylvania Avenue, N.W., Mail Code 1101A
Washington, DC 20460,**

Defendants.

Civil Action No. _____

Civil Action

**COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

**COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Zuru, LLC (“Zuru”), by way of this Complaint against the U.S. Environmental Protection Agency (“EPA”), and Andrew R. Wheeler, in his official capacity as Administrator, U.S. Environmental Protection Agency (“Administrator”), hereby states and alleges as follows:

NATURE OF THE ACTION

1. This action arises from the contention that a Zuru product, referred to as Bactive Heavy Duty Cleaning Wipes, is a “pesticide” within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). It is not.

2. Contrary to law, Defendants have treated Zuru’s product as a “pesticide,” and inappropriately stifled Zuru’s ability to import this valuable non-pesticidal cleaning product into the United States as a result.

3. Thus, pursuant to the Administrative Procedure Act (“APA”), Zuru seeks declaratory and injunctive relief to set aside final agency actions taken by Defendants contrary to FIFRA and its implementing regulations. On June 30, 2020 and July 6, 2020, EPA directed U.S. Customs and Border Protection (“CBP” or “Customs”) to bar Zuru from importing into the United States two shipments (known in customs parlance as “entries”) containing nearly 300,000 retail packages of Zuru’s household cleaning wipes, Bactive Heavy Duty Cleaning Wipes. EPA arbitrarily and capriciously deemed this product a “pesticide,” requiring registration prior to admission into the United States.

4. Zuru then spent the next month and a half trying to learn the basis for EPA’s actions. In a letter and emails dated July 7, July 14 and July 19, 2020, Zuru’s counsel explained in detail the reasons why the product does not fall within the definition of “pesticide” under FIFRA or its

implementing regulations. In short, the product is not labeled or advertised as a pesticide and makes no claims about disinfecting. Under EPA regulations, the product is a “cleaning agent.” Along with “bleach” and deodorizers,” EPA regulations provide expressly that registration is not required for this kind of cleaning product.

5. On August 17, 2020, EPA responded with an expanded and *post hoc* rationalization for its earlier orders denying entry of the product. Even if this *post hoc* rationalization were given any weight, it too should be deemed arbitrary and capricious and otherwise not in accordance with law.

6. Currently, Zuru’s two shipments of wipes are in storage, at Zuru’s own expense, and Zuru must remove them from the United States by a September 6, 2020 deadline or suffer financial penalty. Customs has refused to extend the September 6, 2020 deadline.

7. EPA’s arbitrary and capricious orders also have put in jeopardy Zuru’s ability to import *any* additional Bactive Heavy Duty Cleaning Wipes into the United States. Zuru, therefore, risks losing millions of dollars in sales on its basic household cleaning wipes that make no disinfecting claims. EPA’s arbitrary and capricious orders also put in jeopardy Zuru’s relationship with U.S. customers more broadly in connection with a whole host of products. EPA’s arbitrary and capricious acts harm Zuru by unfairly calling into question Zuru’s relationship and reputation with U.S. suppliers and its ability to import goods into the United States.

8. Therefore, pursuant to FIFRA and the APA, 7 U.S.C. § 136n(a) and 5 U.S.C. §§ 702 and 706(2)(A), Zuru seeks declaratory and injunctive relief to hold unlawful and set aside the arbitrary and capricious orders of EPA refusing admission of Bactive Heavy Duty Cleaning Wipes into the United States even though they are not “pesticides” under the plain language of FIFRA and its implementing regulations at 42 C.F.R. §§ 152.10 and 152.15. *See* Count I. Zuru

also seeks an order requiring EPA to inform Customs that its orders denying admission are withdrawn or set aside, and therefore that Customs must both allow the Bactive Heavy Duty Cleaning Wipes to remain in the United States and to allow additional shipments of Bactive Heavy Duty Cleaning Wipes into the United States.

PARTIES

9. Plaintiff Zuru is an Oregon Limited Liability Corporation with its principal place of business located at 228 Nevada Street, El Segundo, CA 90245-4210.

10. Defendant EPA is headquartered at 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

11. Defendant Andrew R. Wheeler, Administrator of EPA, in his official capacity, has his office at 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

JURISDICTION AND VENUE

12. Jurisdiction over the parties and subject matter of this action is proper in this Court pursuant to 7 U.S.C. § 136n (final action of the Administrator not committed to the discretion of the Administrator by law), 28 U.S.C. § 1331 (actions arising under the laws of the United States), 28 U.S.C. § 1346 (civil action against the United States founded on an Act of Congress or regulation of an executive agency), and 28 U.S.C. § 1361 (action to compel an officer of an agency of the United States to perform his duty).

13. The decision challenged in this action is a final agency action of EPA.

14. There is an actionable and justiciable controversy between Zuru and Defendants requiring resolution by this Court.

15. This Court has personal jurisdiction over Defendants EPA and Administrator of EPA.

16. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and (e) and 5 U.S.C. § 703.

17. This Court may grant declaratory and injunctive relief pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

STANDING

18. Plaintiff Zuru has standing to bring this action under 5 U.S.C. § 702 as a person aggrieved by agency action.

STATEMENT OF FACTS

19. Zuru is an importer into the United States and a U.S. distributor of Bactive Heavy Duty Cleaning Wipes.

20. A true and accurate copy of the artwork and labeling on the packaging of Bactive Heavy Duty Cleaning Wipes are set forth in Exhibits 1 and 2 to this Complaint (“Compl. Ex. 1” and “Compl. Ex. 2”). Complaint Exhibit 1 shows the labeling of all four sides of the package. Complaint Exhibit 2 is a true and correct copy of images of the top and bottom of the package that were sent to EPA per its request. These images are identical to the top and bottom of the package shown in Exhibit 1.

21. Bactive Heavy Duty Cleaning Wipes are disposable, non-woven wet wipes for general household cleaning, packaged 80 wipes to a retail dispensing soft package.

22. The ingredients in the Bactive Heavy Duty Cleaning wipes are water, glycerin, chlorhexidine digluconate, benzalkonium chloride, didecyldimonium chloride, phenoxyethanol, and aloe barbadensis leaf juice. *See* Compl. Exs. 1 and 2.

23. Bactive Heavy Duty Cleaning Wipes are marketed on their package labeling as intended for use in heavy duty cleaning of nonporous surfaces to fight the presence of dirt, grease, and common messes. *See* Compl. Exs. 1 and 2.

24. Bactive Heavy Duty Cleaning Wipes disclaim use on the person stating: “Do not use as a baby wipe or for personal hygiene.” *See* Compl. Exs. 1 and 2.

25. The labeling on the packaging of the Bactive Heavy Duty Cleaning Wipes contains no disinfectant or other pesticidal claims. *See* Compl. Exs. 1 and 2.

26. Zuru’s advertising of the Bactive Heavy Duty Cleaning Wipes contains no disinfectant or other pesticidal claims.

27. Customs issued a binding tariff classification letter ruling, N311396, dated May 12, 2020, holding that Bactive Heavy Duty Cleaning Wipes are described as: “Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401: Preparations put up for retail sale: Other [than containing aromatic or modified aromatic surface-active agent]” under subheading 3402.20.5100, of the Harmonized Tariff Schedule of the United States. *See* N311396 available at <https://rulings.cbp.gov/search?term=N311396&collection=ALL&sortBy=RELEVANCE&pageSize=30&page=1>, last visited August 12, 2020. Customs has different tariff classifications for pesticides. Customs did not conclude that the tariff classification for pesticides or disinfectants described under heading 3808 of the Harmonized Tariff Schedule of the United States was applicable to the Bactive Heavy Duty Cleaning Wipes.

28. By entry for consumption number MFT-27290857, dated June 28, 2020, filed with CBP at the Port of Salt Lake City, Utah, Zuru sought the admission into the commerce of the

United States of one shipping container, holding a quantity of 2381 cartons of Bactive Heavy Duty Cleaning Wipes. Each carton contains 18 retail packages of wipes, and thus this entry contains a total of 42,858 retail packages of Bactive Heavy Duty Cleaning Wipes. These packages are labeled as shown in Exhibits 1 and 2.

29. On June 30, 2020, EPA Region 8 requested photo images for the product packaging, and Zuru responded by providing the images of the packaging. *See* Compl. Ex. 2.

30. By letter to CBP at the Port of Salt Lake City, Utah, dated June 30, 2020, EPA Region 8 refused the admission of entry MFT-27290857. *See* Compl. Ex. 3.

31. The sole basis for EPA's refusal of admission of entry MFT-27290857 is that "[t]he label for Bactive Heavy Duty Cleaning Wipes indicates that one of the active ingredients is 'chlorhexidine digluconate' a chemical that is the active ingredient in several EPA registered disinfectants. Therefore, this product cannot be allowed entry into the United States." *Id.*

32. EPA marked entry MFT-27290857 "Hold Intact," "Refused," and Re-Export" in CBP's Automated Commercial Environment ("ACE") computer system. *Id.*

33. By entry for consumption number MFT-27290840, dated July 2, 2020, filed with CBP at the Port of Salt Lake City, Utah, Zuru sought the admission into the commerce of the United States of six shipping containers, holding a quantity of 14,286 cartons of Bactive Heavy Duty Cleaning Wipes. Each carton contains 18 retail packages of wipes, and thus this entry contains a total of 257,148 retail packages of Bactive Heavy Duty Cleaning Wipes. These packages are labeled as shown in Exhibits 1 and 2.

34. By letter to CBP at the Port of Salt Lake City, Utah, dated July 6, 2020, EPA Region 8 refused the admission of entry MFT-27290840. *See* Compl. Ex. 4.

35. The sole basis for EPA's refusal of admission of entry MFT-27290840 is that "[t]he label for Bactive Heavy Duty Cleaning Wipes indicates that one of the active ingredients is 'chlorhexidine digluconate' a chemical that is the active ingredient in several EPA registered disinfectants. Therefore, this product cannot be allowed entry into the United States." *Id.*

36. EPA marked entry MFT-27290840 "Hold Intact," "Refused," and Re-Export" in CBP's Automated Commercial Environment ("ACE") computer system. *Id.*

37. EPA's June 30, 2020 and July 6, 2020 letters are both final agency actions.

38. By letter dated July 7, 2020 to Mr. David Cobb, EPA Region 8's Section Chief of EPA's Toxics Enforcement Unit, Office of Enforcement Compliance and Environmental Justice, counsel for Zuru requested reconsideration of EPA's refusal of admission. *See* Compl. Ex. 5.

39. Zuru's counsel's July 7, 2020 letter to EPA detailed the grounds for its request that EPA reverse its determination, explaining that (1) the cleaning wipes are not a "pesticide," but rather are produced and distributed as a "cleaning agent," a substance containing a mixture of liquid ingredients, for which no pesticidal claims are made, so that the product is expressly excluded from the definition of a "pesticide," just like bleaches and deodorizers, under the terms of 40 C.F.R. § 152.10, and (2) the mere presence in the product of a chemical registered as a pesticide does not bring the product within the definition of a pesticide, because the product has a significant commercially valuable use other than for a pesticidal purpose, pursuant to 40 C.F.R. § 152.15. *Id.*

40. EPA is authorized to request that CBP demand redelivery and exportation of pesticides refused admission by EPA if the goods are, in fact, pesticides. *See* 7 U.S.C. § 1360(c)(1) and Notice of Arrival for Importations of Pesticides and Pesticide Devices, 81 Fed. Reg. 67140, 67141 (September 30, 2016).

41. On July 13 and 14, 2020, based on EPA's two orders refusing admission, CBP issued Notices to Redeliver ordering Zuru to export the two entries (i.e., shipments) of Bactive Heavy Duty Cleaning Wipes out of the United States within 30 days from the date of the Notices. *See* Compl. Exs. 6 and 7.

42. In response to a request for extension of time from Zuru, on August 7, 2020, CBP reissued its Notices to Redeliver, in order to extend the deadline for Zuru to export the two entries (shipments) of Bactive Heavy Duty Cleaning Wipes until September 6, 2020. *See* Compl. Exs. 8 and 9.

43. In letters to CBP dated August 7, 2020, EPA Region 8 restated its June 30, 2020 and July 6, 2020 decisions to refuse admission of the Bactive Heavy Duty Cleaning Wipes in entries MFT-27290840 and MFT-27290857. *See* Compl. Exs. 10 and 11.

44. On August 17, 2020, EPA responded to Zuru's counsel's letter of July 7, 2020 with new and *post hoc* rationalizations for its orders denying admission of Zuru's two entries (shipments) of Bactive Heavy Duty Cleaning Wipes. Compl. Ex. 12.

45. Such *post hoc* rationalizations are entitled to no weight.

46. In any event, the Zuru product known as Bactive Heavy Duty Cleaning Wipes is not a "pesticide" pursuant to the definition in FIFRA or its implementing regulations.

47. FIFRA defines "pesticide" as a "substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest." FIFRA § 2(u); 7 U.S.C. 136(u).

48. EPA's regulation implementing FIFRA, 40 C.F.R. § 152.10, which is the best evidence of its contents, excludes certain types of products, including "cleaning agents," from the definition of "pesticide," "unless a pesticidal claim is made on their labeling or in connection with their sale and distribution." Section 152.10 provides:

A product that is not intended to prevent, destroy, repel, or mitigate a pest, or to defoliate, desiccate or regulate the growth of plants, is not considered to be a pesticide. The following types of products or articles are not considered to be pesticides unless a pesticidal claim is made on their labeling or in connection with their sale and distribution:

- (a) Deodorizers, bleaches, and cleaning agents;
- (b) Products not containing toxicants, intended only to attract pests for survey or detection purposes, and labeled accordingly;
- (c) Products that are intended to exclude pests only by providing a physical barrier against pest access, and which contain no toxicants, such as certain pruning paints to trees.

Emphasis added.

49. EPA’s regulation implementing FIFRA, 40 C.F.R. § 152.15(b), which is the best evidence of its contents, provides that “a substance is considered to be intended for a pesticidal purpose” if “the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide” Emphasis added. Section 152.15(b) provides:

No person may distribute or sell any pesticide product that is not registered under the Act, except as provided in §§ 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:

* * *

- (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or

* * *

Emphasis added.

50. Bactive Heavy Duty Cleaning Wipes are not pesticides.

51. The labeling for the Bactive Heavy Duty Cleaning Wipes contains no pesticidal claims. *See* Compl. Exs. 1 and 2.

52. More specifically, the labeling makes no claim that the Bactive Heavy Duty Cleaning Wipes or the ingredients in the Wipes are for use in preventing, destroying, repelling, or mitigating any pest. *See id.*

53. The labeling for Bactive Heavy Duty Cleaning Wipes contains no claim that the product or any ingredient in the product disinfects. *See id.*

54. Bactive Heavy Duty Cleaning Wipes are not a pesticide just because they are made in wipe form.

55. The Bactive Heavy Duty Cleaning Wipes list “ingredients,” none of which are identified as “active ingredients.” *See id.*

56. The fact that Bactive Heavy Duty Cleaning Wipes contain the ingredient chlorhexidine digluconate does not make Bactive Heavy Duty Cleaning Wipes a pesticide.

57. Bactive Heavy Duty Cleaning Wipes have commercially valuable use other than for a pesticidal purpose.

58. Bactive Heavy Duty Cleaning Wipes have commercially valuable use to remove grease and dirt from nonporous surfaces.

59. Considered by itself, chlorhexidine digluconate, an ingredient in the Bactive Heavy Duty Cleaning Wipes, has commercially valuable non-pesticidal use in its own right. Zuru is informed and understands that chlorhexidine digluconate contributes degreaser and detergent qualities to the wipes, and acts as a preservative in the wipes. Zuru has confirmed that EPA’s

Chemical and Products Categories (CPCat) database includes chlorhexidine digluconate in the “cleaning/washing” use category (CPCat cassette). <https://actor.epa.gov/cpcat/faces/chemicalUse.xhtml?casrn=18472-51-0>, last visited August 10, 2020. The preservative properties of chlorhexidine digluconate are similarly well-documented. *See* Willis, L. (1993) Final Report on the Safety Assessment of Chlorhexidine/chlorhexidine diacetate/chlorhexidine dihydrochloride/chlorhexidine digluconate. *Journal of the American College of Toxicology*, 12(3), 201-223. <https://journals.sagepub.com/doi/pdf/10.3109/10915819309140642>, last visited August 10, 2020, and Andersen, F. A. (2011) Annual review of cosmetic ingredient safety assessments: 2007-2010. *International journal of toxicology*, 30(5_suppl), 73S-127S. <https://journals.sagepub.com/doi/pdf/10.1177/1091581811412618>, last visited August 10, 2020.

60. In sum, the product known as Bactive Heavy Duty Cleaning Wipes is for the purpose of cleaning, not mitigating a pest or disinfecting. The chemicals in the product are present for non-pesticidal purposes and contribute preservative, degreaser, and detergent properties. For this reason, the Bactive Heavy Duty Cleaning Wipes have commercial value other than for use as a pesticide.

61. Accordingly, in this case, the basis for EPA’s denial of admission of the Bactive Heavy Duty Cleaning Wipes is contrary to FIFRA and EPA’s regulations implementing FIFRA.

62. Zuru has incurred approximately \$75,000 in storage costs and related expenses as a result of EPA’s refusal of admission.

63. Zuru will incur additional costs if it has to export all or part of the two entries (shipments) of Bactive Heavy Duty Cleaning Wipes from the United States back to China.

64. Zuru has suffered damage to its reputation as a reliable supplier as a result of EPA’s refusal of admission of the Bactive Heavy Duty Cleaning Wipes.

65. Zuru has suffered damage to its reputation as a reliable customer to its supplier of Bactive Heavy Duty Cleaning Wipes.

66. There are no administrative remedies that Zuru is required to exhaust prior to making this claim. There is no administrative process that Zuru can invoke to review the final agency decisions of EPA at issue.

COUNT I

Violation of the Administrative Procedure Act

67. Paragraphs 1 through 66 of this Complaint are incorporated by reference, and alleged, as though fully stated herein.

68. EPA's denials of entry of Bactive Heavy Duty Cleaning Wipes into the United States are arbitrary and capricious and otherwise not in accordance with law in violation of 5 U.S.C. § 706(2)(A) because Bactive Heavy Duty Cleaning Wipes are not pesticides as defined by FIFRA or its implementing regulations.

69. EPA's denials are "otherwise not in accordance with" FIFRA § 2(u); 7 U.S.C. 136(u) and 40 C.F.R. §§ 152.10 and 152.15(b) and thus contrary to law.

70. Specifically, EPA's conclusion that Bactive Heavy Duty Cleaning Wipes are a pesticide because they contain an active ingredient "chlorhexidine digluconate" is arbitrary and capricious and contrary to law.

71. EPA stated no other basis for its orders in its final orders denying entry.

72. *Post hoc* rationalizations are entitled to no weight. Thus, the August 17, 2020 letter cannot justify EPA's erroneous determinations in its June 30, 2020 and July 6, 2020 orders after the fact.

73. Even if the *post hoc* rationalization is given any weight, the conclusions and reasoning in EPA's August 17, 2020 letter that Bactive Heavy Duty Cleaning Wipes are pesticides are also arbitrary and capricious and otherwise not in accordance with law in violation of the APA.

74. Accordingly, EPA's decisions to deny entry of the two entries (shipments) of Bactive Heavy Duty Cleaning Wipes (MFT-27290857 and MFT-27290840) are arbitrary and capricious and otherwise not in accordance with law.

PRAYER FOR RELIEF

WHEREFORE, Zuru respectfully requests that this Court enter judgment in its favor, and this Court enter an Order as follows:

A. Declaring EPA's orders (*i.e.*, EPA's June 30, 2020 order, July 6, 2020 order, and August 7, 2020 restated orders) (1) denying admission of Bactive Heavy Duty Cleaning Wipes into the United States and (2) requiring Zuru to either export Bactive Heavy Duty Cleaning Wipes or register the product as a pesticide for their admission into the United States, to be arbitrary, capricious and otherwise not in accordance with law in violation of 5 U.S.C. § 706(2)(A);

B. Declaring EPA's orders (*i.e.*, EPA's June 30, 2020 order, July 6, 2020 order, and August 7, 2020 restated orders) (1) denying admission of Bactive Heavy Duty Cleaning Wipes into the United States and (2) requiring Zuru to either export Bactive Heavy Duty Cleaning Wipes or register the product as a pesticide for their admission into the United States, to have been issued *ultra vires* by EPA and/or in violation of the requirements of FIFRA and 5 U.S.C. § 706(2);

C. Setting aside EPA's orders (*i.e.*, EPA's June 30, 2020 order, July 6, 2020 order, and August 7, 2020 restated orders) (1) denying admission of Bactive Heavy Duty Cleaning Wipes into the United States and (2) requiring Zuru to either export Bactive Heavy Duty Cleaning Wipes

or register the product as a pesticide for their admission into the United States, in accordance with 5 U.S.C. § 706(2)(A);

D. Declaring that EPA's August 17, 2020 letter is a *post hoc* rationalization entitled to no weight;

E. Enjoining Defendants from enforcing EPA's orders (*i.e.*, EPA's June 30, 2020 order, July 6, 2020 order, and August 7, 2020 restated orders) and requiring Defendants to withdraw EPA's orders denying admission of Bactive Heavy Duty Cleaning Wipes into the United States (*i.e.*, EPA's June 30, 2020 order, July 6, 2020 order, and August 7, 2020 restated orders);

F. Requiring Defendants to notify CBP either that EPA is withdrawing its orders denying admission of Bactive Heavy Duty Cleaning Wipes into the United States (*i.e.*, EPA's June 30, 2020 order, July 6, 2020 order, and August 7, 2020 restated orders) or that the Court has set them aside, and thus EPA is no longer requesting that CBP seek exportation of the Bactive Heavy Duty Cleaning Wipes in the two entries at issue (MFT-27290857 and MFT-27290840);

G. Declaring that CBP's Notices to Redeliver related to the two shipments at issue (MFT-27290857 and MFT-27290840), which implement EPA's orders described above, are void;

H. Staying the September 6, 2020 exportation deadline, which was directed by Defendants and implemented by Customs following Defendants' orders, pending resolution of this lawsuit;

I. If Defendants and/or Customs, at Defendants' direction, have forced Zuru to export the Bactive Heavy Duty Cleaning Wipes in the two entries at issue (MFT-27290857 and MFT-27290840) prior to adjudication of this lawsuit, holding and declaring that Defendants acts as to the two entries were arbitrary and capricious, unlawful, and otherwise not in accordance with law;

J. Enjoining Defendants from requiring Bactive Heavy Duty Cleaning Wipes to be registered as a “pesticide”;

K. Enjoining Defendants from denying entry of Bactive Heavy Duty Cleaning Wipes into the United States, and

L. Providing Plaintiff with such other relief as this Court may deem just.

Respectfully submitted,

COUNSEL FOR PLAINTIFF ZURU, LLC

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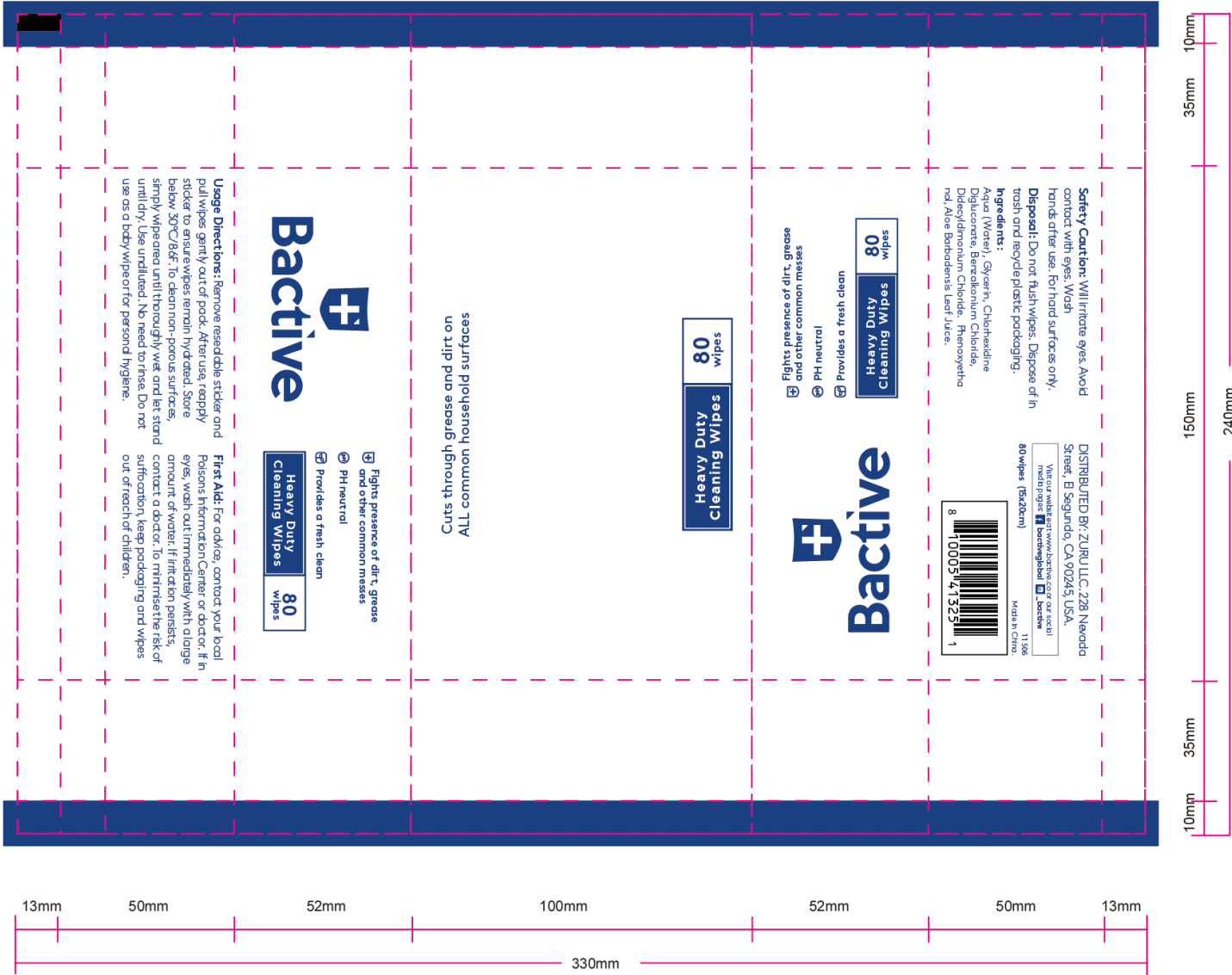
Dated: August 31, 2020

Exhibit 1

雨禾卫生湿巾80片
 正面居中 易拉贴85*50mm
 Open size: 240mmX330mm

USA wipes 14 April 2020

pantone: 2146C



Usage Directions: Remove resealable sticker and pull/wipes gently out of pack. After use, reapply sticker to ensure wipes remain hydrated. Store below 30°C/86°F. To clean non-porous surfaces, simply wipe area until thoroughly wet and let stand until dry. Use undiluted. No need to rinse. Do not use as a body wipe or for personal hygiene.

First Aid: For advice, contact your local Poisons Information Center or doctor. If in eyes, wash out immediately with a large amount of water. If irritation persists, contact a doctor. To minimise the risk of suffocation, keep packaging and wipes out of reach of children.

Bactive



Heavy Duty Cleaning Wipes 80 wipes

- Fights presence of dirt, grease and other common messes
- PH neutral
- Provides a fresh clean

Cuts through grease and dirt on ALL common household surfaces

Heavy Duty Cleaning Wipes 80 wipes

- Fights presence of dirt, grease and other common messes
- PH neutral
- Provides a fresh clean

Bactive

Heavy Duty Cleaning Wipes 80 wipes

Safety Caution: Will irritate eyes. Avoid contact with eyes. Wash hands after use. For hard surfaces only. **Dispose:** Do not flush wipes. Dispose of in trash and recycle plastic packaging. **Ingredients:** Aqua (Water), Glycerin, Chlorhexidine Digluconate, Benzalkonium Chloride, Didecylmonium Chloride, Phenoxethanol, Aloe Barbodensis Leaf Juice.

DISTRIBUTED BY: ZURU LLC, 228 Nevada Street, E. Segundo, CA 90245, USA.
 Visit our website: www.bactive.com for our social media pages: [Facebook](#) [Twitter](#) [LinkedIn](#) [Instagram](#)
 80 wipes (5x20cm) 11.56g Made in China



10mm 35mm 150mm 240mm

13mm 50mm 52mm 100mm 52mm 50mm 13mm 330mm

Exhibit 2

Cuts through grease and dirt on
ALL common household surfaces



Bactive

OPEN 

**Heavy Duty
Cleaning Wipes**

**80
wipes**

Usage Directions: Remove resealable sticker and pull wipes gently out of pack. After use, reapply sticker to ensure wipes remain hydrated. Store below 30°C/86F. To clean non-porous surfaces, simply wipe area until thoroughly wet and let stand until dry. Use undiluted. No need to rinse. Do not use as a baby wipe or for personal hygiene.

First Aid: For advice, contact your local Poisons Information Center or doctor. If in eyes, wash out immediately with a large amount of water. If irritation persists, contact a doctor. To minimise the risk of suffocation, keep packaging and wipes out of reach of children.

Safety Caution: Will irritate eyes. Avoid contact with eyes. Wash hands after use. For hard surfaces only.

Disposal: Do not flush wipes. Dispose of in trash and recycle plastic packaging.

Ingredients:
Aqua (Water), Glycerin, Chlorhexidine Digluconate, Benzalkonium Chloride, Didecyldimonium Chloride. Phenoxyethanol, Aloe Barbadensis Leaf Juice.

DISTRIBUTED BY: ZURU LLC. 228 Nevada Street, El Segundo, CA 90245, USA.

Visit our website at www.bactive.co or our social media pages:  [bactiveglobal](#)  [_bactive](#)

80 wipes (15x20cm)

11506

Made in China.

MFG: 2020/04/25
16:48
EXP: 2022/04/24
HZ20200425



Exhibit 3



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

Ref: 8ENF-AT-TP

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Date: June 30, 2020

From: David Cobb
Unit Chief, Toxics Enforcement Unit
Office of Enforcement, Compliance and Environmental Justice

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Port of Salt Lake City, Utah

Subject: Requested action to be taken regarding the Bactive Heavy Duty Cleaning Wipes
in shipment with entry number MFT-27290857

By this memorandum, the U.S. Environmental Protection Agency, Region 8, is informing the Bureau of Customs and Border Protection of the U.S. Department of Homeland Security that the Bactive Heavy Duty Cleaning Wipes in the import shipment described below should be **Denied Entry-Refused Delivery** into the United States pursuant to the authority of section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114. The entry was marked “Hold Intact,” “Refused,” and “Re-Export” in ACE by the EPA on June 30, 2020.

The following information pertains to the shipment of the Bactive Heavy Duty Cleaning Wipes:

- The importer is Zuru LLC, 228 Nevada Street, El Segundo, California, 90245-4210, points of contacts are Monica Zhou monica@zuru.com and Liam Whittaker Liam@zuru.com.
- The manufacturer is Naturecare Cosmetic Company Limited, Number 837, Huanchengbei Road, Fuxi, Stre Deqing County, Huzhou, 313208 China.
- The broker is Mainfreight US Customs Brokerage, point of contact is elizabeth.duran@mainfreightusa.com.
- The airway bill number is CMDUCNUN228502.
- The ship date was June 28, 2020.
- The product is Bactive Heavy Duty Cleaning Wipes.
- The port of entry is Salt Lake City, Utah, 3303.
- The country of origin is China.

The shipment that arrived at the border for import was in violation of FIFRA section 12(a)(1)(A), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered

under section 3 of FIFRA. Under FIFRA, 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 substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance). (40 C.F.R. § 152.15(b))

The label for Bactive Heavy Duty Cleaning Wipes indicates that one of the active ingredients is “chlorhexidine digluconate” a chemical that is the active ingredient in several EPA registered disinfectants. Therefore, this product cannot be allowed entry into the United States.

On June 30, 2020, the Customs and Border Patrol unit chief in Salt Lake City, Utah, was informed by the EPA that it would deny entry of this shipment.

Please contact Christine Tokarz, the import enforcement coordinator, by phone at (303) 312-6147 or by email at tokarz.christine@epa.gov if you have any questions concerning this matter.

Exhibit 4



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

Ref: 8ENF-AT-TP

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Date: July 6, 2020

From: David Cobb
Unit Chief, Toxics Enforcement Unit
Office of Enforcement, Compliance and Environmental Justice

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Port of Salt Lake City, Utah

Subject: Requested action to be taken regarding the Bactive Heavy Duty Cleaning Wipes
in shipment with entry number MFT-27290840

By this memorandum, the U.S. Environmental Protection Agency, Region 8, is informing the Bureau of Customs and Border Protection of the U.S. Department of Homeland Security that the Bactive Heavy Duty Cleaning Wipes in the import shipment described below should be **Denied Entry-Refused Delivery** into the United States pursuant to the authority of section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114. The entry was marked “Hold Intact,” “Refused,” and “Re-Export” in ACE by the EPA on July 6, 2020.

The following information pertains to the shipment of the Bactive Heavy Duty Cleaning Wipes:

- The importer is Zuru LLC, 228 Nevada Street, El Segundo, California, 90245-4210, points of contacts are Monica Zhou monica@zuru.com and Liam Whittaker Liam@zuru.com.
- The manufacturer is Naturecare Cosmetic Company Limited, Number 837, Huanchengbei Road, Fuxi, Stre Deqing County, Huzhou, 313208 China.
- The broker is Mainfreight US Customs Brokerage, point of contact is Cathey Bartholomew Cathey.Bartholomew@mainfreightusa.com.
- The airway bill number is ONEYSH0AB6097700.
- The ship date was July 4, 2020.
- The product is Bactive Heavy Duty Cleaning Wipes.
- The port of entry is Salt Lake City, Utah, 3303.
- The country of origin is China.

The shipment that arrived at the border for import was in violation of FIFRA section 12(a)(1)(A), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered

under section 3 of FIFRA. Under FIFRA, 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 substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance). (40 C.F.R. § 152.15(b))

The label for Bactive Heavy Duty Cleaning Wipes indicates that one of the active ingredients is “chlorhexidine digluconate” a chemical that is the active ingredient in several EPA registered disinfectants. Therefore, this product cannot be allowed entry into the United States.

On July 6, 2020, the Customs and Border Patrol unit chief in Salt Lake City, Utah, was informed by the EPA that it would deny entry of this shipment.

Please contact Christine Tokarz, the import enforcement coordinator, by phone at (303) 312-6147 or by email at tokarz.christine@epa.gov if you have any questions concerning this matter.

Exhibit 5

July 7, 2020

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

David Cobb
Chief, Toxics Enforcement Unit
Office of Enforcement, Compliance and
Environmental Justice
United States Environmental Protection Agency

Re: *Bactive Heavy Duty Cleaning Wipes; Entry Number MFT-27290857*

Dear Mr. Cobb:

On behalf of our client ZURU LLC (“ZURU”), I am requesting your Office to reconsider its June 30, 2020 determination that the importation of our client’s product (a non-pesticidal cleansing wipe, identified further above and referred to herein as “the Product”) was in violation of FIFRA.¹

We respectfully request that you reverse these determinations and recommend to the Bureau of Customs and Border Protection (“Customs”) that the shipment be released for distribution and sale in the United States. Given the value

SUMMARY OF GROUNDS FOR REQUEST

The determination is incorrect for two reasons:

First, the Product is not a “pesticide,” but rather a mixture of substances for which no pesticidal claims are made, produced and distributed as a “*cleaning agent*,” which is thus excluded from the definition of “pesticide” as a product that is “not intended for a pesticidal purpose,” as are other “deodorants, bleaches, and *cleaning agents*.” 40 C.F.R. § 152.10.

Second, the determination that our client’s product “has no significant commercially valuable use as distributed or sold other than . . . use for pesticidal purpose” within the meaning of 40 C.F.R. § 152.15 is erroneous. We explain below that *the Product has a significant commercially valuable non-pesticidal purpose*, so that the mere presence in the Product of a chemical agent that is registered for use as an active ingredient in other products does not bring the Product within the definition of “pesticide” and trigger the requirement for registration here.

THE IMPORTER

Our client ZURU is headquartered in Hong Kong. The company was founded in 2004, and now employs over 5,000 persons worldwide. ZURU’s core business is the development, manufacture and sale of consumer goods in a variety of product categories, including hair care, dietary supplements, laundry detergents, personal care and infant care. Revenues from these products help to support the Company’s considerable philanthropic activities, which support vocational programs and orphanages in China.

¹ The Agency’s June 30, 2020 letter is attached at Tab 1 to this letter.

July 7, 2020

Page 2

THE PRODUCT

“Bactive Heavy Duty Cleaning Wipes,” as the brand name indicates, is a “wipe” (*i.e.*, a towel or towelette or napkin-like item used to “wipe” the surface of an object, having been pre-moistened or saturated with cleaning agents that facilitate cleaning). For purposes of this discussion, we refer to the wipe and the cleaning agents together as a single item.

THE INTENDED USE OF THE PRODUCT

The Product is intended for ordinary cleaning uses in the home. This is demonstrated by the three concise claims that appear on the Product label,² as follows:

“Cuts through grease and dirt on ALL common household surfaces.”

And

“Fights presence of dirt, grease and other common messes.”

And

“Provides a fresh clean.”

As of the date of this letter, the Product has been sold exclusively through the company known as “Target,” a chain-store retailer, and on the Target website. The company is not aware of any third-party sales through internet sales platforms such as Amazon. The Product will be sold by another chain retailer in the near future, but that company has not yet begun selling the product and does not presently advertise it.

Thus, for emphasis and to be clear, neither ZURU nor Target (the only companies that presently distribute or sell the Product) make any pesticidal claims for the Product. Nowhere do ZURU or Target, through labeling or advertisements, indicate that the use of this Product on household surfaces will function to provide any antimicrobial, disinfectant, sterilizer or other pesticidal benefit. Rather the Product is intended for use as a household cleaner product or, in the language of the regulations and EPA guidance, as a “cleaning agent” or “cleaning product.”

THE CRITERIA FOR DETERMINING WHETHER REGISTRATION IS REQUIRED

The basic rule is that a product sold in or imported into the United States for use as a “pesticide” must be the subject of a registration issued by the Agency. FIFRA § 3(5)(a); 12(a)(1)(A). That is not subject to dispute. Rather, the question is how the regulations define the term “pesticide,” and whether the Product fits within the definition.

THE DEFINITION OF “PESTICIDE”

For ease of reference, we recite the definition from the statute, and the critical portions of all of the pertinent regulations.

FIFRA defines “pesticide” as a “substance or mixture of substances *intended* for preventing, destroying, repelling, or mitigating any pest.” FIFRA § 2(u); 7 USC § 136(u) (emphasis added). Thus, the critical issue in determining whether a product is *intended* for a pesticidal use.

² A copy of the label, attached at Tab 2, includes all three of the labeling claims made for the Product, and identifies all of the ingredients.

July 7, 2020

Page 3

This is not a subjective matter. Rather, two agency regulations speak directly to the issue here and establish clear criteria. The first, at 40 C.F.R. § 152.10, indicates that the ZURU product is not a “pesticide,” as a matter of law. The second regulation, at 40 C.F.R. § 152.15, indicates that the mere presence of an “active ingredient” in the ZURU Product does not bring the Product within the definition of “pesticide,” because the Product has a significant non-pesticidal use that is commercially valuable. The text of these regulations follows.

The Exclusion for “Cleaning Agents”

Section 152.10, under the heading “*Products that are not pesticides because they are not intended for pesticidal purpose,*” provides as follows:

“A product that is not intended to prevent, destroy, repel or mitigate a pest or to defoliate, desiccate or regulate the growth of plants, is not considered to be a pesticide. *The following types of products or articles are not considered to be pesticides unless a pesticidal claim is made on their labeling* or in connection with their sale and distribution:

- (a) Deodorizers, bleaches, and *cleaning agents*:
- (b) Products not containing toxicants, intended only to attract pests for survey or detection purpose, and labeled accordingly:
- (c) Products that are intended to exclude pests only by providing a physical barrier against pest access, and which contain no toxicants, such as certain pruning paints to trees.

40 C.F.R. § 152.10(a) (emphasis added).

The Exception from the Requirement for Registration for Substances Distributed or Sold for a Significant Commercially Valuable Non-Pesticidal Use

Section 152.15, under the heading “*Pesticide products required to be registered,*” provides that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

- (a) The person who distributes or sells the substance claims, states or implies (by labeling or otherwise):
 - (1) That the substance . . . can or should be used as a pesticide: or
 - (2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or
- (b) That the substance consists of or contains one or more active ingredients and has *no significant commercially valuable use* as distributed or sold *other than (1) use for pesticidal purpose* (by itself or in combination with any other substance) (2) use for manufacture of a pesticide; or
- (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

40 C.F.R. § 152.15 (emphasis added)

July 7, 2020

Page 4

ERRONEOUS DENIAL OF ENTRY FOR THE ZURU PRODUCT

According to the June 30, 2020 letter, EPA has determined that ZURU's Bactive Heavy Duty Cleaning Wipes product is pesticide, which requires registration.

The Letter specifically indicates that:

"The shipment that arrived at the border was in violation of FIFRA section 12(a)(1)(A), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered under section 3 of FIFRA."

Elaborating, the letter states the following as legal background for the determination:

"Under FIFRA, 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 substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance). 40 C.F.R. § 152.15(b).

The letter then concludes:

"The label for Bactive Heavy Duty Cleaning Wipes indicates that one of the active ingredients³ is "chlorhexidine gluconate" a chemical that is the active ingredient in several EPA registered disinfectants. Therefore, this product cannot be allowed entry into the United States."

REASONS THAT THE ZURU PRODUCT IS NOT A "PESTICIDE" AND DOES NOT REQUIRE REGISTRATION

1. The Product is a "cleaning agent" within the meaning of 40 C.F.R. § 152.10 and therefore is excluded from the definition of pesticide in the same manner as deodorizers and bleach.

The EPA Fact Sheet entitled "*Determining If a Cleaning Product Is a Pesticide Under FIFRA*" explains the difference between a pesticidal substance and a cleaning agent, and indicates that pesticides require registration and cleaning agents do not.⁴

³ The use of the term "active ingredient" is a misnomer. None of the ingredients in the ZURU Product is designated as an "active ingredient," because the Product is not a "pesticide." Thus, the label for ZURU's Product identifies each of the ingredients by name, and does not identify any ingredients as "active" or "inert."

⁴ Available on-line at: <https://www.epa.gov/pesticide-registration/determining-if-cleaning-product-pesticide-under-fifra>. We understand there to be no difference between the term "Cleaning Product" as it is used in the Fact Sheet "cleaning agent" as that term is used in the Section 152.10. In fact, the Fact Sheet expressly refers to products governed under Section 152.10.

July 7, 2020

Page 5

The Fact Sheet explains that a “cleaning product” is a “substance or *mixture of substances* (such as chemical or biological substances) that is intended to clean away or remove inanimate material from a surface, water or air, and that makes no pesticidal claims.” Emphasis added. It is clear that the ZURU Product meets this definition.

Specific to the Product, the Fact Sheet then explains that:

“Certain products may have effects that mitigate pests without being intended for a pesticidal purpose. 40 CFR § 152.10 sets out three groups of products (one of which includes deodorizers, bleaches and *cleaning agents*) **that are not pesticides because they are not intended to prevent, destroy, repel or mitigate a pest.**”

This is not a novel issue, and this interpretation of the regulation did not originate with ZURU, but with EPA. By the very terms of the regulation and the Fact Sheet, this determination of non-pesticidal status for “deodorizers, bleaches, and cleaning agents” applies as a matter of law.

This means that ZURU’s cleaning product is to be treated for regulatory purposes on the same terms as any number of common bleach products and bathroom cleaning products: (1) those products are not subject to regulation as pesticides, irrespective of their ingredients, unless their labeling bears pesticidal claims; and (2) a “deodorizer, bleach or cleaning agent” product may contain an ingredient that is used in other products as an “active ingredient” without triggering the requirement for registration, as long as the producer or distributor makes no pesticidal claims.

2. The Product is a “substance” that has a “significant commercially valuable use” for a non-pesticidal purpose within the meaning of 40 C.F.R. § 152.15(b).

Relying on Section 152.15(b), EPA concludes that the ZURU Product is intended for use as a pesticide because it contains the chemical known as chlorhexidine gluconate, which is the “active ingredient in several EPA-registered disinfectants.”⁵ This conclusion also is incorrect: it overlooks the requirement in Section 152.15(b) that, in order to be considered a “pesticide,” the “substance,” *i.e.*, the product of interest, must have “no significant commercially valuable use as distributed or sold other than . . . for [a] pesticidal purpose.” As a factual matter, the Product does indeed have a valuable non-pesticidal purpose: as a cleaning agent.

Thus, the mere fact that chlorhexidine gluconate is present in the Product does not render the Product a pesticide. The Product continues to be a “cleaning agent,” which is a significant non-pesticidal purpose, and thus continues *not* to require registration.

This observation should end the inquiry. It is worth noting, however, that chlorhexidine digluconate itself has a recognized, significant commercially valuable non-pesticidal use: the chemical is used routinely in the United States and many other countries as a preservative in cosmetic products such as hair conditioners, skin cleaners, and skin preparation products.^{6,7} By

⁵ Chlorhexidine gluconate is present in the Product at a nominal concentration of .5%.

⁶ Willis, L. (1993) Final Report on the Safety Assessment of Chlorhexidine/chlorhexidine diacetate/chlorhexidine dihydrochloride/chlorhexidine digluconate. Journal of the American College of Toxicology, 12(3), 201-223.

<https://journals.sagepub.com/doi/pdf/10.3109/10915819309140642>

July 7, 2020

Page 6

contrast, it appears from EPA records that chlorhexidine digluconate is used as an active ingredient in only three actively registered pesticides,⁸ for uses dissimilar to those of our our client's cleaning product.

3. ZURU makes no pesticidal claims for the Product.

The regulations quoted above, 40 C.F.R. § 152.10 and § 152.15(a)(1), include a requirement that the producer (importer) make no pesticidal claims. As discussed above, ZURU makes no marketing or labeling claims for Bactive Heavy Duty Cleaning Wipes other than the three claims on the Product label, recited above. These are not pesticidal claims.

As a point of clarification, none of EPA's communications accuse our client of making pesticidal claims, and we understand that this is *not* an issue. We raise the point only because the absence of pesticidal claims is important to the exclusion and exemption under the regulations above.

CONCLUSION

For all of the reasons above, the ZURU Product does not come within the definition of "pesticide" and does not require registration. We trust that you will agree, and request you urgently to advise the Bureau of Customs and to withdraw its determination that the shipment above should be denied entry. Should your Office be disinclined to grant our request, please advise us promptly so that we may discuss this further or explore other remedies. The shipment that is the subject of this letter has significant monetary value, and the storage and shipping charges that may be incurred if this matter is not addressed promptly are significant as well. Thus, time is of the essence to ZURU and its retailer customers.

Sincerely,



Stanley W. Landfair
Counsel for ZURU LLC

cc: Rosemarie Kelley
Director, Office of Civil Enforcement
Office of Enforcement, Compliance and Environmental Justice

⁷ Andersen, F. A. (2011) Annual review of cosmetic ingredient safety assessments: 2007-2010. *International journal of toxicology*, 30(5_suppl), 73S-127S.
<https://journals.sagepub.com/doi/pdf/10.1177/1091581811412618>

⁸ Based upon a [Pesticide Product and Label System \(PPLS\)](#) active ingredient search for CAS Number 18472-51. This search yielded 3 independent EPA Registration Numbers (85298-2, 70467-3, 89494-1).

Tab 1



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

Ref: 8ENF-AT-TP

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Date: June 30, 2020

From: David Cobb
Unit Chief, Toxics Enforcement Unit
Office of Enforcement, Compliance and Environmental Justice

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Port of Salt Lake City, Utah

Subject: Requested action to be taken regarding the Bactive Heavy Duty Cleaning Wipes
in shipment with entry number MFT-27290857

By this memorandum, the U.S. Environmental Protection Agency, Region 8, is informing the Bureau of Customs and Border Protection of the U.S. Department of Homeland Security that the Bactive Heavy Duty Cleaning Wipes in the import shipment described below should be **Denied Entry-Refused Delivery** into the United States pursuant to the authority of section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114. The entry was marked "Hold Intact," "Refused," and "Re-Export" in ACE by the EPA on June 30, 2020.

The following information pertains to the shipment of the Bactive Heavy Duty Cleaning Wipes:

- The importer is Zuru LLC, 228 Nevada Street, El Segundo, California, 90245-4210, points of contacts are Monica Zhou monica@zuru.com and Liam Whittaker Liam@zuru.com.
- The manufacturer is Naturecare Cosmetic Company Limited, Number 837, Huanchengbei Road, Fuxi, Stre Deqing County, Huzhou, 313208 China.
- The broker is Mainfreight US Customs Brokerage, point of contact is elizabeth.duran@mainfreightusa.com.
- The airway bill number is CMDUCNUN228502.
- The ship date was June 28, 2020.
- The product is Bactive Heavy Duty Cleaning Wipes.
- The port of entry is Salt Lake City, Utah, 3303.
- The country of origin is China.

The shipment that arrived at the border for import was in violation of FIFRA section 12(a)(1)(A), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered under section 3 of FIFRA. Under FIFRA, 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 substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance). (40 C.F.R. § 152.15(b))

The label for Bactive Heavy Duty Cleaning Wipes indicates that one of the active ingredients is “chlorhexidine digluconate” a chemical that is the active ingredient in several EPA registered disinfectants. Therefore, this product cannot be allowed entry into the United States.

On June 30, 2020, the Customs and Border Patrol unit chief in Salt Lake City, Utah, was informed by the EPA that it would deny entry of this shipment.

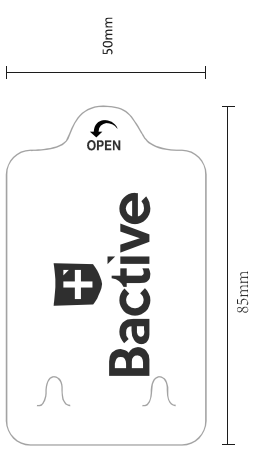
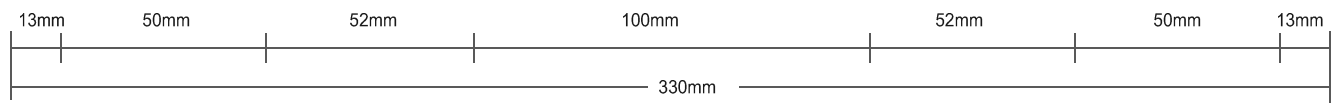
Please contact Christine Tokarz, the import enforcement coordinator, by phone at (303) 312-6147 or by email at tokarz.christine@epa.gov if you have any questions concerning this matter.

Tab 2

雨禾卫生湿巾80片
 正面居中 易拉贴85*50mm
 Open size: 240mmX330mm

USA wipes 8 April 2020

pantone:
 2146C



Usage Directions: Remove resealable sticker and pull wipes gently out of pack. After use, reapply sticker to ensure wipes remain hydrated. Store below 30°C/86°F. To clean non-porous surfaces, simply wipe area until thoroughly wet and let stand for 10 minutes. Use undiluted. No need to rinse. Do not use as a body wipe or for personal hygiene.

Bactiive



80 Heavy Duty Cleaning Wipes

- Fights presence of dirt, grease and other common messes
- PH neutral
- Provides a fresh, hygienic clean

Cuts through grease and dirt on ALL common hard surfaces

80 Heavy Duty Cleaning Wipes

80 wiper

80 Heavy Duty Cleaning Wipes

Fights presence of dirt, grease and other common messes

- PH neutral
- Provides a fresh, hygienic clean

Bactiive

80 Heavy Duty Cleaning Wipes

Safety/Cautions: Will irritate eyes. Avoid contact with eyes. Wash hands after use. For hand sanitizer use only. **Dispose:** Do not flush wipes. Dispose of in trash and recycle plastic packaging.

Ingredients: Glycerin, Chlorhexidine Digluconate, Benzalkonium Chloride, Didecyltrimonium Chloride, Phenylethanol, Aloe-Berberidensis Leaf Juice.

DISTRIBUTED BY: ZURU LLC, 228 Nevada Street, El Segundo, CA 90245, USA.

Questions or Comments? Visit our website at www.zuru.com or our social media pages: [Facebook](#) [Twitter](#) [LinkedIn](#) [Instagram](#) [YouTube](#)

Made in China. 11368
 8 1000541325 1



Exhibit 6

CUSTOMS & BORDER PROTECTION
 PO BOX 22330
 SALT LAKE CITY, UT 84122

**NOTICE TO MARK
 AND/OR
 NOTICE TO REDELIVER**

SECTION I (To Be Completed By Customs)

2. NAME OF CONTACT PERSON
CBPO Keightley

3. TELEPHONE NO.
(801)524-3445 x223

19 CFR 134.51, 134.52, 141.113

4. TO (Importer of Record Name and Address):

ZURU LLC
 228 Nevada Street
 El Segundo, CA 90245

ENTRY DATA

5. PORT OF ENTRY
3303 - SLC

6. ENTRY NO.
MFT-27290840

7. DATE OF ENTRY
7/2/2020

8. BROKER OR IMPORTER FILE NO.
Mainfreight inc.

The merchandise described below is in violation of statute(s)/regulation(s) as indicated, and cannot be entered into the commerce of the U.S. until brought into conformity as noted below in Section II. If it is not brought into conformity, redelivered, exported, or destroyed under Customs supervision within 30 days from the date of this Notice or the time specified by another Government agency having jurisdiction over the importation, liquidated damages and/or criminal/civil penalties shall apply.

9. STATUTE(S)/REGULATION(S) VIOLATED

19 U.S.C. 1304 (Section 1304 Tariff Act of 1930) (Country of Origin Marking Violation) Other, Namely:

10. DESCRIPTION OF MERCHANDISE	11. QUANTITY	12. IDENTIFYING MARKS AND NUMBERS	13. SHIPPER/MANUFACTURER
Wet wipes	14286		Naturecare Cosmetic Co.

SECTION II (To Be Completed By Customs)

14. ACTION REQUIRED OF IMPORTER

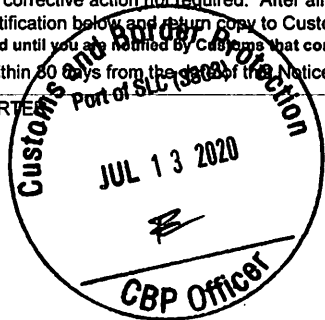
Merchandise must be brought into compliance as specified below or returned to Customs custody within 30 days of this Notice or other time specified.

Marking or other corrective action must be done under Customs supervision.

Customs supervision of marking or other corrective action not required. After all merchandise has been brought into conformity with cited statute(s)/regulation(s), complete the certification below and return copy to Customs with without a sample.
 *WARNING: All merchandise must be retained until you are notified by Customs that corrective action is acceptable.
 Merchandise must be redelivered to Customs within 30 days from the date of this Notice or other time specified.

15. REMARKS/INSTRUCTIONS/OTHER ACTION REQUIRED OF IMPORTER

EPA refusal. Commodity must be re-exported



16. SIGNATURE OF CUSTOMS OFFICER
[Signature]

17. DATE
7/13/2020

SECTION III - IMPORTER CERTIFICATION (To Be Completed By Importer/Authorized Agent)
IMPORTER: - APPROPRIATE ITEMS MUST BE COMPLETED, SIGNED, AND DATED BEFORE ACCEPTANCE BY CUSTOMS.

Merchandise to be exported destroyed under Customs supervision in lieu of marking or other required corrective measures.

PLACE **Salt Lake City** DATE **7-13-2020** TIME **1030 L**

I (We) guarantee the payment of all expenses incident to the above action.

I certify that all merchandise has been marked to indicate the country of origin as required by 19 U.S.C. 1304, or otherwise brought into compliance with cited statute(s) or regulation(s). Sample is is not submitted herein. Merchandise and original containers being held intact and available for Customs inspection at: (Indicate Place and Phone No.)

SIGNATURE OF IMPORTER OR AUTHORIZED AGENT **X** TITLE TELEPHONE DATE

SECTION IV (To Be Completed By Customs)

Merchandise excepted from marking under:

Merchandise has been legally marked or otherwise brought into conformity with cited statute(s)/regulation(s): under Customs Supervision certification accepted.

Merchandise was exported destroyed under Customs supervision. 'Other, namely:

SIGNATURE OF CUSTOMS OFFICER DATE

Exhibit 7

CUSTOMS & BORDER PROTECTION
 PO BOX 22330
 SALT LAKE CITY, UT 84122

**NOTICE TO MARK
 AND/OR
 NOTICE TO REDELIVER**

SECTION I (To Be Completed By Customs)

2. NAME OF CONTACT PERSON
CBPO Keightley

3. TELEPHONE NO.
(801)524-3445 x223

19 CFR 134.51, 134.52, 141.113

4. TO (Importer of Record Name and Address):

ZURU LLC
 228 Nevada Street
 El Segundo, CA 90245

ENTRY DATA

5. PORT OF ENTRY
3303 - SLC

6. ENTRY NO.
MFT-27290857

7. DATE OF ENTRY
6/28/2020

8. BROKER OR IMPORTER FILE NO.
Mainfreight USA

The merchandise described below is in violation of statute(s)/regulation(s) as indicated, and cannot be entered into the commerce of the U.S. until brought into conformity as noted below in Section II. If it is not brought into conformity, redelivered, exported, or destroyed under Customs supervision within 30 days from the date of this Notice or the time specified by another Government agency having jurisdiction over the importation, liquidated damages and/or criminal/civil penalties shall apply.

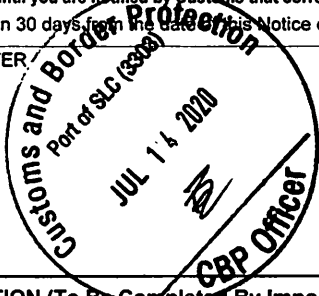
9. STATUTE(S)/REGULATION(S) VIOLATED
 19 U.S.C. 1304 (Section 1304 Tariff Act of 1930) (Country of Origin Marking Violation) Other, Namely: **To be re-exported, EPA Refusal**

10. DESCRIPTION OF MERCHANDISE	11. QUANTITY	12. IDENTIFYING MARKS AND NUMBERS	13. SHIPPER/MANUFACTURER
Wet Wipes	2381		Naturecare Cosmetic

SECTION II (To Be Completed By Customs)

14. ACTION REQUIRED OF IMPORTER
 Merchandise must be brought into compliance as specified below or returned to Customs custody within 30 days of this Notice or other time specified.
 Marking or other corrective action must be done under Customs supervision.
 Customs supervision of marking or other corrective action not required. After all merchandise has been brought into conformity with cited statute(s)/regulation(s), complete the certification below and return copy to Customs with without a sample.
 *WARNING: All merchandise must be retained until you are notified by Customs that corrective action is acceptable.
 Merchandise must be redelivered to Customs within 30 days from the date of this Notice or other time specified.

15. REMARKS/INSTRUCTIONS/OTHER ACTION REQUIRED OF IMPORTER
Items to be re-exported, EPA refusal



16. SIGNATURE OF CUSTOMS OFFICER
[Signature]

17. DATE
7/14/2020

SECTION III - IMPORTER CERTIFICATION (To Be Completed By Importer/Authorized Agent)
 IMPORTER: - APPROPRIATE ITEMS MUST BE COMPLETED, SIGNED, AND DATED BEFORE ACCEPTANCE BY CUSTOMS.

Merchandise to be exported destroyed under Customs supervision in lieu of marking or other required corrective measures.

PLACE **Salt Lake City, UT** DATE **7-14-2020** TIME **1130 L**

I (We) guarantee the payment of all expenses incident to the above action.

I certify that all merchandise has been marked to indicate the country of origin as required by 19 U.S.C. 1304, or otherwise brought into conformity with cited statute(s) or regulation(s). Sample is is not submitted herein. Merchandise and original containers being held intact and available for Customs inspection at: (Indicate Place and Phone No.)

SIGNATURE OF IMPORTER OR AUTHORIZED AGENT **X** TITLE TELEPHONE DATE

SECTION IV (To Be Completed By Customs)

Merchandise excepted from marking under:
 Merchandise has been legally marked or otherwise brought into conformity with cited statute(s)/regulation(s): under Customs Supervision certification accepted.
 Merchandise was exported destroyed under Customs supervision. Other, namely:
 SIGNATURE OF CUSTOMS OFFICER DATE

Exhibit 8

CUSTOMS & BORDER PROTECTION
 PO BOX 22330
 SALT LAKE CITY, UT 84122

**NOTICE TO MARK
 AND/OR
 NOTICE TO REDELIVER**

SECTION I (To Be Completed By Customs)

2. NAME OF CONTACT PERSON
 CBPO Keightley

3. TELEPHONE NO.
 (801)524-3445 x223

19 CFR 134.51, 134.52, 141.113

4. TO (Importer of Record Name and Address):

ZURU LLC
 228 Nevada Street
 El Segundo, CA 90245

ENTRY DATA

5. PORT OF ENTRY
 3303 - SLC

6. ENTRY NO.
 MFT-27290840

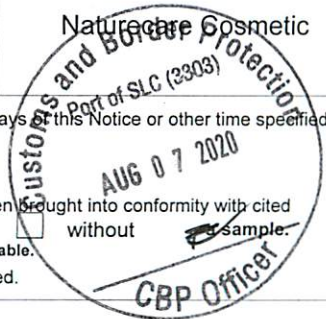
7. DATE OF ENTRY
 7/2/2020

8. BROKER OR IMPORTER FILE NO.
 Mainfreight USA

The merchandise described below is in violation of statute(s)/regulation(s) as indicated, and cannot be entered into the commerce of the U.S. until brought into conformity as noted below in Section II. If it is not brought into conformity, redelivered, exported, or destroyed under Customs supervision within 30 days from the date of this Notice or the time specified by another Government agency having jurisdiction over the importation, liquidated damages and/or criminal/civil penalties shall apply.

9. STATUTE(S)/REGULATION(S) VIOLATED
 19 U.S.C. 1304 (Section 1304 Tariff Act of 1930) Other, Namely: To be re-exported, EPA Refusal
 (Country of Origin Marking Violation)

10. DESCRIPTION OF MERCHANDISE	11. QUANTITY	12. IDENTIFYING MARKS AND NUMBERS	13. SHIPPER/MANUFACTURER
Wet Wipes	14286		Naturechre Cosmetic Port of SLC (3303)



SECTION II (To Be Completed By Customs)

14. ACTION REQUIRED OF IMPORTER
 Merchandise must be brought into compliance as specified below or returned to Customs custody within 30 days of this Notice or other time specified.
 Marking or other corrective action must be done under Customs supervision.
 Customs supervision of marking or other corrective action not required. After all merchandise has been brought into conformity with cited statute(s)/regulation(s), complete the certification below and return copy to Customs with without sample.
 *WARNING: All merchandise must be retained until you are notified by Customs that corrective action is acceptable.
 Merchandise must be redelivered to Customs within 30 days from the date of this Notice or other time specified.

15. REMARKS/INSTRUCTIONS/OTHER ACTION REQUIRED OF IMPORTER
 Items to be re-exported, EPA refusal. Extension of time granted until 09/06/2020

16. SIGNATURE OF CUSTOMS OFFICER
[Signature]

17. DATE
 8/7/2020

SECTION III - IMPORTER CERTIFICATION (To Be Completed By Importer/Authorized Agent)
IMPORTER: - APPROPRIATE ITEMS MUST BE COMPLETED, SIGNED, AND DATED BEFORE ACCEPTANCE BY CUSTOMS.

Merchandise to be exported destroyed under Customs supervision in lieu of marking or other required corrective measures. I certify that all merchandise has been marked to indicate the country of origin as required by 19 U.S.C. 1304, or otherwise brought into compliance with cited statute(s) or regulation(s). Sample is is not submitted herein. Merchandise and original containers being held intact and available for Customs inspection at: (Indicate Place and Phone No.)

PLACE Salt Lake City, UT DATE 8-7-2020 TIME 11:25L

I (We) guarantee the payment of all expenses incident to the above action.

SIGNATURE OF IMPORTER OR AUTHORIZED AGENT TITLE TELEPHONE DATE

SECTION IV (To Be Completed By Customs)

Merchandise excepted from marking under:
 Merchandise has been legally marked or otherwise brought into conformity with cited statute(s)/regulation(s): under Customs Supervision certification accepted.
 Merchandise was exported destroyed under Customs supervision. 'Other, namely:
 SIGNATURE OF CUSTOMS OFFICER DATE

Exhibit 9

CUSTOMS & BORDER PROTECTION
 PO BOX 22330
 SALT LAKE CITY, UT 84122

**NOTICE TO MARK
 AND/OR
 NOTICE TO REDELIVER**

2. NAME OF CONTACT PERSON
 CBPO Keightley

3. TELEPHONE NO.
 (801)524-3445 x223

4. TO (Importer of Record Name and Address):

ZURU LLC
 228 Nevada Street
 El Segundo, CA 90245

19 CFR 134.51, 134.52, 141.113

ENTRY DATA

5. PORT OF ENTRY
 3303 - SLC

6. ENTRY NO.
 MFT-27290857

7. DATE OF ENTRY
 6/28/2020

8. BROKER OR IMPORTER FILE NO.
 Mainfreight USA

The merchandise described below is in violation of statute(s)/regulation(s) as indicated, and cannot be entered into the commerce of the U.S. until brought into conformity as noted below in Section II. If it is not brought into conformity, redelivered, exported, or destroyed under Customs supervision within 30 days from the date of this Notice or the time specified by another Government agency having jurisdiction over the importation, liquidated damages and/or criminal/civil penalties shall apply.

9. STATUTE(S)/REGULATION(S) VIOLATED

19 U.S.C. 1304 (Section 1304 Tariff Act of 1930)
 (Country of Origin Marking Violation)

Other, Namely: To be re-exported, EPA Refusal

10. DESCRIPTION OF MERCHANDISE	11. QUANTITY	12. IDENTIFYING MARKS AND NUMBERS	13. SHIPPER/MANUFACTURER
Wet Wipes	2381		Naturecare Cosmetic

14. ACTION REQUIRED OF IMPORTER

Merchandise must be brought into compliance as specified below or returned to Customs custody within 30 days of this Notice or other time specified.

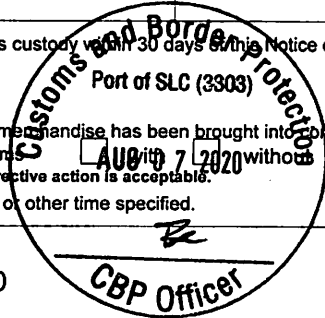
Marking or other corrective action must be done under Customs supervision.

Customs supervision of marking or other corrective action not required. After all merchandise has been brought into conformity with cited statute(s)/regulation(s), complete the certification below and return copy to Customs. **WARNING: All merchandise must be retained until you are notified by Customs that corrective action is acceptable.**

Merchandise must be redelivered to Customs within 30 days from the date of this Notice or other time specified.

15. REMARKS/INSTRUCTIONS/OTHER ACTION REQUIRED OF IMPORTER

Items to be re-exported, EPA refusal. Extension of time granted until 09/06/2020



16. SIGNATURE OF CUSTOMS OFFICER
[Signature]

17. DATE
 8/7/2020

SECTION III - IMPORTER CERTIFICATION (To Be Completed By Importer/Authorized Agent)
 IMPORTER: - APPROPRIATE ITEMS MUST BE COMPLETED, SIGNED, AND DATED BEFORE ACCEPTANCE BY CUSTOMS.

Merchandise to be exported destroyed under Customs supervision in lieu of marking or other required corrective measures.

PLACE Salt Lake City, UT DATE 8-7-2020 TIME 1120L

I (We) guarantee the payment of all expenses incident to the above action.

I certify that all merchandise has been marked to indicate the country of origin as required by 19 U.S.C. 1304, or otherwise brought into compliance with cited statute(s) or regulation(s). Sample is is not submitted herein. Merchandise and original containers being held intact and available for Customs inspection at: (Indicate Place and Phone No.)

SIGNATURE OF IMPORTER OR AUTHORIZED AGENT X TITLE TELEPHONE DATE

SECTION IV (To Be Completed By Customs)

Merchandise excepted from marking under:

Merchandise has been legally marked or otherwise brought into conformity with cited statute(s)/regulation(s): under Customs Supervision certification accepted.

Merchandise was exported destroyed under Customs supervision. 'Other , namely:

SIGNATURE OF CUSTOMS OFFICER DATE

Exhibit 10



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

Ref: 8ENF-AT-P

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

From: David Cobb
Section Chief, Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division

DAVID COBB

Digitally signed by DAVID
COBB
Date: 2020.07.08 08:51:38
-06'00'

July 28, 2020

10:19 AM

Received by
EPA Region VIII

Hearing Clerk

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Port of Salt Lake City, Utah

Subject: Requested action to be taken regarding the Bactive Heavy Duty Cleaning Wipes
in shipment with entry number MFT-27290840 FIFRA-08-2020-0048

By this memorandum, the U.S. Environmental Protection Agency, Region 8, is informing the Bureau of Customs and Border Protection of the U.S. Department of Homeland Security that the Bactive Heavy Duty Cleaning Wipes in the import shipment described below should be **Denied Entry-Refused Delivery** into the United States pursuant to the authority of section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114. On July 6, 2020, the Customs and Border Patrol unit chief in Salt Lake City, Utah, was informed by the EPA that it would deny entry of this shipment since it is an unregistered pesticide. The entry was marked "Hold Intact," "Refused," and "Re-Export".

The following information pertains to the shipment of the Bactive Heavy Duty Cleaning Wipes:

- The importer is Zuru LLC, 228 Nevada Street, El Segundo, California, 90245-4210, points of contacts are Monica Zhou monica@zuru.com and Liam Whittaker Liam@zuru.com.
- The manufacturer is Naturecare Cosmetic Company Limited, Number 837, Huanchengbei Road, Fuxi, Stre Deqing County, Huzhou, 313208 China.
- The broker is Mainfreight US Customs Brokerage, point of contact is Cathey Bartholomew Cathey.Bartholomew@mainfreightusa.com.
- The airway bill number is ONEYSH0AB6097700.
- The ship date was July 4, 2020.
- The product is Bactive Heavy Duty Cleaning Wipes.
- The port of entry is Salt Lake City, Utah, 3303.
- The country of origin is China.

The shipment that arrived at the border for import was in violation of FIFRA section 12(a)(1)(A), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered under section 3 of FIFRA. Under FIFRA, 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 substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance). (40 C.F.R. § 152.15(b))

The label for Bactive Heavy Duty Cleaning Wipes indicates that one of the active ingredients is “chlorhexidine digluconate” a chemical that is the active ingredient in several EPA registered disinfectants. Therefore, this product cannot be allowed entry into the United States.

Please contact Christine Tokarz, EPA Region 8 FIFRA Import Enforcement Coordinator, by phone at (303) 312-6147 or by email at tokarz.christine@epa.gov if you have any questions concerning this matter.

Exhibit 11



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

Ref: 8ENF-AT-P

SENT VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

July 28, 2020

10:19 AM

Received by

From: David Cobb
Section Chief, Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division

EPA Region VIII

Hearing Clerk

Digitally signed by DAVID

DAVID COBB

COBB

Date: 2020.07.08 08:58:57

-06'00'

To: U.S. Department of Homeland Security
Bureau of Customs and Border Protection
Port of Salt Lake City, Utah

Subject: Requested action to be taken regarding the Bactive Heavy Duty Cleaning Wipes
in shipment with entry number MFT-27290857 FIFRA-08-2020-0049

By this memorandum, the U.S. Environmental Protection Agency, Region 8, is informing the Bureau of Customs and Border Protection of the U.S. Department of Homeland Security that the Bactive Heavy Duty Cleaning Wipes in the import shipment described below should be **Denied Entry-Refused Delivery** into the United States pursuant to the authority of section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136o(c), and the implementing regulations at 19 C.F.R. section 12.114. On June 30, 2020, the Customs and Border Patrol unit chief in Salt Lake City, Utah, was informed by the EPA that it would deny entry of this shipment since it is an unregistered pesticide. The entry was marked "Hold Intact," "Refused," and "Re-Export".

The following information pertains to the shipment of the Bactive Heavy Duty Cleaning Wipes:

- The importer is Zuru LLC, 228 Nevada Street, El Segundo, California, 90245-4210, points of contacts are Monica Zhou monica@zuru.com and Liam Whittaker Liam@zuru.com.
- The manufacturer is Naturecare Cosmetic Company Limited, Number 837, Huanchengbei Road, Fuxi, Stre Deqing County, Huzhou, 313208 China.
- The broker is Mainfreight US Customs Brokerage, point of contact is elizabeth.duran@mainfreightusa.com.
- The airway bill number is CMDUCNUN228502.
- The ship date was June 28, 2020.
- The product is Bactive Heavy Duty Cleaning Wipes.
- The port of entry is Salt Lake City, Utah, 3303.
- The country of origin is China.

The shipment that arrived at the border for import was in violation of FIFRA section 12(a)(1)(A), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered under section 3 of FIFRA. Under FIFRA, 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 substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance). (40 C.F.R. § 152.15(b))

The label for Bactive Heavy Duty Cleaning Wipes indicates that one of the active ingredients is “chlorhexidine digluconate” a chemical that is the active ingredient in several EPA registered disinfectants. Therefore, this product cannot be allowed entry into the United States.

Please contact Christine Tokarz, the import enforcement coordinator, by phone at (303) 312-6147 or by email at tokarz.christine@epa.gov if you have any questions concerning this matter.

Exhibit 12



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

Ref: 8ENF-AT-P

SENT BY ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Mr. Stan Landfair
Dentons US LLP
stan.landfair@dentons.com

Re: Entry No. MFT-27290857; FIFRA-08-2020-0049
Entry No. MFT-27290840; FIFRA-08-2020-0048

Dear Mr. Landfair:

This letter is in response to your correspondence to the U.S. Environmental Protection Agency (EPA) on July 7 and July 14, 2020, regarding the attempted entry of imports by Zuru, LLC (Zuru), of Bactive Heavy Duty Cleaning Wipes (Bactive Wipes). In your correspondence, you argue on Zuru's behalf that: 1) Bactive Wipes are not pesticides requiring registration as set forth in 40 C.F.R. § 152.15(b); and 2) further, because they are in fact "cleaning agents," Bactive Wipes are explicitly excluded from the definition of pesticide by 40 C.F.R. § 152.10(a). Thank you for your patience in allowing us to review these arguments. Our responses are below.

I. EPA's Determination that Bactive Wipes are Pesticides

On June 30, 2020, the shipment of Bactive Wipes with entry number MFT-27290857 was marked "Hold Intact," "Refused," and "Re-Export" in the U.S. Customs and Border Patrol (CBP) Automated Commercial Environment system (ACE) by the EPA. On July 6, 2020 the shipment of Bactive Wipes with entry number MFT-27290840 was marked "Hold Intact," "Refused," and "Re-Export" in ACE by the EPA. The EPA had notified CBP that it should refuse entry on the basis that the shipments were imported in violation of FIFRA section 12(a)(1)(A), which states that it is unlawful for any person to distribute or sell any pesticide that is not registered under section 3 of FIFRA. 7 U.S.C. § 136j(a)(1)(A). Under FIFRA, in pertinent part, a pesticide is any substance (or mixture of substances) intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

In correspondence to CBP and to you/your client, the EPA further noted that 40 C.F.R. § 152.15(b) states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for a pesticidal purpose (by itself or in combination with any other substance) or use for the manufacture of a pesticide. The EPA had determined that the Bactive Wipes (the substance) contain chemicals (chlorhexidine digluconate and benzalkonium

chloride) that are known to EPA as active ingredients. The EPA also determined that as the Bactive Wipes are distributed or sold, i.e, with such pesticidal ingredients, in the particular form of a wipes product packaged as it is, they have no significant commercially valuable use other than use as an antimicrobial pesticide. Therefore, we determined the Bactive Wipes were intended for use as a pesticide.

In addition to this finding under 40 C.F.R. § 152.15(b), we identified other factors that indicated Bactive Wipes are intended for a pesticidal purpose. For example, there are claims made for the Bactive Wipes that demonstrate intended use as a pesticide under the standard set forth in 40 C.F.R. § 152.15(a) (“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”):

- Directly on the Bactive Wipes package, the name and logo imply that the product is intended for antimicrobial use and public health protection. “Bactive” implies bacterial fighting properties, and the cross logo is considered a universal first aid sign.
- A retailer of the Bactive Wipes, Target, was selling the Bactive Wipes on its website, www.target.com, under the site’s antimicrobial wipes category, <https://www.target.com/s/antibacterial+wipe>.

Further, evidence collected by the EPA shows that consumers believe the Bactive Wipes are being sold for a pesticidal purpose, and that it is reasonable to conclude that the sellers of the products are aware of their customers’ impressions. 40 C.F.R. § 152.15(c) (“The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose”). For example:

- Target customer reviews of Bactive Wipes recorded on www.target.com, available at <https://www.target.com/p/zuru-bactive-heavy-duty-cleansing-wipes-80ct-/A-79803714>, include:
 - “These ARE disinfecting wipes, unlike the other comments state! READ THE INGREDIENTS and do a SEARCH online! I can’t use antibiotics in any form, but I can use antimicrobials! This is why I knew the ingredients will kill germs! You do need to wipe thoroughly, leave the surface wet, and wait for it to air dry, this is important! That is the most effective way to kill germs with this type of solution.”
 - “Anyone saying these don’t have a disinfectant in the ingredients, did not research all of the ingredients. Didecyldimonium chloride is a disinfectant.”
 - “These wipes don’t say how much they use of the two seemingly active ingredients: chlorhexidine digluconate and benzalkonium chloride. I looked these up online, and the WHO says these are less effective than your typical bleach or alcohol-based disinfectants. Given that I can’t find anything with the more effective solutions, I figure this will do in a pinch. Remember that the amount of time the surface stays wet is also a factor. . . giving something a quick swipe isn’t necessarily going to do much for you. . . .”
 - “ingredients are good to destroy many microbes. Recommend you don’t mix with other chemicals.”
 - “These were only products available in area that usually has clorox cleaning/disinfecting wipes.”

Therefore, EPA’s determination that Bactive Wipes are pesticides was made after consideration of all three circumstances in 40 C.F.R. § 152.15 wherein the intended use of a product may be observed, and was in fact observed, for Zuru’s Bactive Wipes.

II. Zuru's Argument that the Bactive Wipes are Excluded "Cleaning Agents"

Zuru argues that Bactive Wipes are "cleaning agents" and are therefore not pesticides, as set forth by 40 C.F.R. § 152.10(a). In making this argument, Zuru cites to the EPA's fact sheet, *Determining If a Cleaning Product Is a Pesticide Under FIFRA (EPA Cleaning Product Guide)*.¹

A plain reading of the regulation indicates that "cleaning agents" are not pesticides "unless a pesticidal claim is made on their labeling or in connection with their sale and distribution," in which case, they are pesticides. As set forth above, the EPA observed pesticidal claims not only on the Bactive Wipes labeling itself, but also "in connection with their sale and distribution." Further, the EPA observed additional online marketing of the products using pesticidal claims. For example:

- The product is advertised on <https://www.punchbowlpackaging.co.nz/bactive-personal-protection-product/> with pesticide claims. Any consumer in the United States conducting a search for Bactive Wipes can easily access this website and view the product in an almost identical form to the product available in the United States. Claims here include:
 - "As the country begin to feel the effects of Covid-19, our sister company required a cost effective and reliable supply of protection products for its team members."
 - "Bactive Disinfecting Wipes"
 - "Kills 99.9% of Germs"

Therefore, Bactive Wipes do not meet the exemption for "cleaning agents" set forth in 40 C.F.R. § 152.10(a).

The *EPA Cleaning Product Guide* supports this determination. As to whether a product is a cleaning product or a pesticide, it states unequivocally the following, each of which reinforce the EPA's positions set forth above:

- "In other words, where a claim or implication is made in connection with the sale or distribution of a cleaning product that its use will mitigate a pest, either by itself or in combination with any other substance, the product would be considered to be intended for a pesticidal purpose and would therefore be required to be registered."
- "This fact sheet applies to claims made on a cleaning product's label or labeling or through other means such as web sites, advertising, promotional or sales activities and testimonial claims in connection with sale or distribution of the product."
- "Examples of Claims That the Agency Considers to be Pesticidal . . .
 - A banner, logo, design, header or any claim on a label or labeling, or through other means such as web sites, advertising, etc. that specifically links the cleaning product to pest control, Integrated Pest Management (IPM), pests or a specific kind of pest."
- "Examples of Claims That the Agency May or May Not Consider to be Pesticidal . . . Cleaning products with claims such as those described below may or may not be considered to be intended for a pesticidal purpose depending on the use and context. If the context of the claims on a product's label, labeling or as made by other means appears to imply or express that the product mitigates a pest, directly or indirectly, either by itself or by removing the pest's food, food source or its habitat, then the product would be considered to be subject to FIFRA.
 - Catalogs or websites that list both cleaning products and pesticidal products in close proximity could imply that the cleaning products are pesticidal."

¹ <https://www.epa.gov/pesticide-registration/determining-if-cleaning-product-pesticide-under-fifra>

III. Conclusion

Upon review of the arguments advanced on behalf of Zuru and its Bactive Wipes product, the EPA still finds that Bactive Wipes are intended for a pesticidal use, are pesticides, and must be registered with the EPA before being sold or distributed in the U.S. We find no basis to release the shipments as Zuru has requested. Zuru must export the merchandise as directed by CBP.

If you have any questions please contact Shaula Eakins, Assistant Regional Counsel
eakins.shaula@epa.gov.

Sincerely,
DAVID
COBB

David Cobb, Section Chief
Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division

Digitally signed by
DAVID COBB
Date: 2020.08.17
14:39:18 -06'00'

cc: Mr. Liam Whittaker, Zuru LLC, Liam Whittaker liam@zuru.com
Ms. Adrienne Trivedi, Attorney, U.S. EPA Office of Enforcement and Compliance Assurance

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS ZURU, LLC (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>Los Angeles</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS U.S. Environmental Protection Agency ("EPA") Andrew R. Wheeler (Official Capacity as EPA Administrator) COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>District of Columbia</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Christina M. Carroll: Dentons US LLP, 1900 K. Street, N.W., Washington, D.C. 20006. Tel: (202) 496-7212 Stanley W. Landfair: Dentons US LLP, One Market Plaza Spear Tower, San Francisco, CA 94105. Tel: (415) 267-4170 Michael K. Tomenga, Esq. Nevell Peterson LLP, 1400 16th Street, N.W., Suite 350, Washington, DC 20036-2227. Tel: (202) 776-1148	ATTORNEYS (IF KNOWN) Unknown

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY) <table style="width:100%; border: none;"> <tr> <td><input type="radio"/> 1 U.S. Government Plaintiff</td> <td><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input checked="" type="radio"/> 2 U.S. Government Defendant</td> <td><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</td> </tr> </table>	<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table style="width:100%; border: none;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> </tr> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)																												
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Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																								
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																								

IV. CASE ASSIGNMENT AND NATURE OF SUIT
 (Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input checked="" type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)	<input type="radio"/> F. Pro Se General Civil		
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Violation of the Administrative Procedure Act pursuant to 5 U.S.C. Secs. 702 and 706 and 7 U.S.C. Sec. 136n(a); seeking declaratory and injunctive relief.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ Equitable Relief	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 8/31/2020	SIGNATURE OF ATTORNEY OF RECORD: /s/ Christina M. Carroll
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

ZURU, LLC,

Plaintiff(s)

v.

U.S. Environmental Protection Agency ("EPA") and
Andrew R. Wheeler, in his official capacity as,
Administrator of the U.S. EPA,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) U.S. ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, N.W., Mail Code 1101A
Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: PLAINTIFF: ZURU, LLC, 228 Nevada Street, El Segundo, CA 90245-4210

PLAINTIFF'S COUNSEL:

Christina M. Carroll, Dentons US LLP, 1900 K Street, N.W., Washington, DC 20006
Stanley C. Landfair, Dentons US LLP, One Market Plaza, San Francisco, CA 94105
Michael K. Tomenga, Neville Peterson LLP, 1400 16th Street, N.W., Suite 350,
Washington, DC 20036-2227

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

ZURU, LLC,

Plaintiff(s)

v.

U.S. Environmental Protection Agency ("EPA") and
Andrew R. Wheeler, in his official capacity as,
Administrator of the U.S. EPA,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ANDREW R. WHEELER, in his official capacity as, ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, N.W., Mail Code 1101A
Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: PLAINTIFF: ZURU, LLC, 228 Nevada Street, El Segundo, CA 90245-4210

PLAINTIFF'S COUNSEL:

Christina M. Carroll, Dentons US LLP, 1900 K Street, N.W., Washington, DC 20006
Stanley C. Landfair, Dentons US LLP, One Market Plaza, San Francisco, CA 94105
Michael K. Tomenga, Neville Peterson LLP, 1400 16th Street, N.W., Suite 350,
Washington, DC 20036-2227

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: