

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

BAYER CORPORATION; BAYER CROPSCIENCE LP; CENTRAL GARDEN & PET COMPANY; EXCEL MARKETING; FARNAM COMPANIES, INC.; (Additional Parties Attachment form is attached)

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CONSUMER ADVOCACY GROUP, INC., in the public interest

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUN 05 2008

John A. Clarke, Executive Officer/Clerk

BY MARY GARCIA, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California for the County of Los Angeles

Stanley Mosk Courthouse

111 N. Hill St., Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Daniel Cho, Yeroushalmi & Associates, 3700 Wilshire Blvd., Suite 480

Los Angeles, CA 90010, 213-382-3183

CASE NUMBER: **BC392118**
(Número del Caso)

DATE:

(Fecha)

JUN 05 2008

JOHN A. CLARKE, CLERK

(Secretario)

M. GARCIA

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons form POS-010.)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

(SEAL)

COPY

SHORT TITLE: Consumer Advocacy Group, Inc. v. Bayer Corporation, et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

FOUR PAWS PRODUCTS, LTD.; GRANT LABORATORIES, INC.; GULFSTREAM HOME & GARDEN, INC.; PENNINGTON SEED, INC.; WELLMARK INTERNATIONAL; SPECTRUM BRANDS, INC.; UNITED INDUSTRIES CORPORATION; WATERBURY COMPANIES, INC.; and DOES 1 – 50

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUN 05 2008

John A. Clarke, Executive Officer/Clerk
[Signature]
BY MARY GARCIA, Deputy

1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 YEROUSHALMI & ASSOCIATES
5 3700 Wilshire Blvd., Suite 480
6 Los Angeles, CA 90010
7 Telephone: 213-382-3183
8 Facsimile: 213-382-3430
9 Email: lawfirm@yeroushalmi.com
10 Attorney for Plaintiff, Consumer Advocacy Group, Inc.

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES --UNLIMITED

11 CONSUMER ADVOCACY GROUP, INC., in)
12 the public interest,)

13 Plaintiff,

14 v.

15 BAYER CORPORATION; BAYER)
16 CROPSCIENCE LP; CENTRAL GARDEN &)
17 PET COMPANY; EXCEL MARKETING;)
18 FARNAM COMPANIES, INC.; FOUR PAWS)
19 PRODUCTS, LTD.; GRANT)
20 LABORATORIES, INC.; GULFSTREAM)
21 HOME & GARDEN, INC.; PENNINGTON)
22 SEED, INC.; WELLMARK)
23 INTERNATIONAL; SPECTRUM BRANDS,)
24 INC.; UNITED INDUSTRIES)
25 CORPORATION; WATERBURY)
26 COMPANIES, INC.; and DOES 1 – 50,)

27 Defendants.)

11 CASE NO. BC392118
12)
13) COMPLAINT FOR VIOLATIONS OF
14) PROPOSITION 65, THE SAFE
15) DRINKING WATER AND TOXIC
16) ENFORCEMENT ACT OF 1986
17) (Health & Saf. Code, §§ 25249.5 et
18) seq.)
19)
20) ACTION IS AN UNLIMITED CIVIL
21) CASE (exceeds \$25,000)

26 Plaintiff, Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG") alleges a cause of
27 action against defendants as follows.

THE PARTIES

1. Plaintiff, Consumer Advocacy Group, Inc. is a non-profit corporation qualified to do business in the State of California. It brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant, Bayer Corporation, is an Indiana corporation.
3. Defendant, Bayer CropScience LP, is a Delaware limited partnership.
4. Defendant, Central Garden & Pet Company, is a Delaware corporation.
5. Defendant, Excel Marketing, is an affiliated company of Central Garden & Pet Company.
6. Defendant, Farnam Companies, Inc. is an affiliated company of Central Garden & Pet Company.
7. Defendant, Four Paws Products, Ltd. is an affiliated company of Central Garden & Pet Company.
8. Defendant, Grant Laboratories, Inc. is an affiliated company of Central Garden & Pet Company.
9. Defendant, Gulfstream Home & Garden, Inc. is an affiliated company of Central Garden & Pet Company.
10. Defendant, Pennington Seed, Inc. is an affiliated company of Central Garden & Pet Company.
11. Defendant, Wellmark International is an affiliated company of Central Garden & Pet Company.
12. Defendant, Spectrum Brands, Inc. is a Wisconsin corporation.
13. Defendant, United Industries Corporation is a Delaware corporation.
14. Defendant, Waterbury Companies, Inc. is or was a Delaware corporation.

1 15. Plaintiff is ignorant of the true names and capacities of defendants Does 1-50, and
2 therefore sues these defendants by such fictitious names. Plaintiff will amend this
3 complaint to allege their true names and capacities when ascertained. Plaintiff is
4 informed, believes, and thereon alleges that each fictitiously named defendant is
5 responsible in some manner for the occurrences and damages alleged.
6

7 16. At all times mentioned herein, "Defendants" include Bayer Corporation; Bayer
8 CropScience LP; Central Garden & Pet Company; Excel Marketing; Farnam Companies,
9 Inc.; Four Paws Products, Ltd.; Grant Laboratories, Inc.; Gulfstream Home & Garden,
10 Inc.; Pennington Seed, Inc.; Wellmark International; Spectrum Brands, Inc.; United
11 Industries Corporation; Waterbury Companies, Inc.; and Does 1 - 50.
12

13 17. At all times mentioned each defendant was a "[p]erson in the course of doing business"
14 within the meaning of Health and Safety Code section 25249.11, subdivision (b).
15 Plaintiff is informed, believes, and thereon alleges that at all times mentioned each
16 defendant had ten or more employees.
17

18 JURISDICTION AND VENUE

19 18. The Court has jurisdiction over this lawsuit pursuant California Constitution Article VI,
20 Section 10, which grants the Superior Court original jurisdiction in all causes except
21 those given by statute to other trial courts.
22

23 FIRST CAUSE OF ACTION

24 (By Consumer Advocacy Group, Inc. and against Bayer Corporation; Bayer CropScience LP;
25 Central Garden & Pet Company; Excel Marketing; Farnam Companies, Inc.; Four Paws
26 Products, Ltd.; Grant Laboratories, Inc.; Gulfstream Home & Garden, Inc.; Pennington Seed,
27 Inc.; Wellmark International; Spectrum Brands, Inc.; United Industries Corporation;
28

1 Waterbury Companies, Inc., and DOES 1 – 50 for Violations of Proposition 65, The Safe
2 Drinking Water and Toxic Enforcement Act of 1986 (Health & Saf. Code, §§ 25249.5 et
3 seq.)
4

5 19. Plaintiff repeats and incorporates by reference the previous paragraphs of this complaint
6 as though fully set forth herein.

7 20. In 1986, California voters approved an initiative to address growing concerns about
8 exposure to toxic chemicals. The initiative, known as Proposition 65, helps to protect
9 California's drinking water sources from contamination, to allow consumers to make
10 informed choices about the products they buy, and to enable persons to protect themselves
11 from toxic chemicals as they see fit.
12

13 21. Proposition 65 requires the Governor of California to publish a list of chemicals known to
14 the state to cause cancer, birth defects, or other reproductive harm ("Listed Chemicals").
15 Health & Saf. Code, § 25249.8. The list, updated annually, contains over 550 chemicals.
16 Proposition 65 imposes warning requirements and other controls that apply to the Listed
17 Chemicals.
18

19 22. All businesses with ten or more employees that operate or sell products in California
20 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited from
21 knowingly discharging Listed Chemicals into sources of drinking water (Health & Saf. Code,
22 § 25249.5) and (2) required to provide "clear and reasonable" warnings before exposing a
23 person, knowingly and intentionally, to a Listed Chemical (Health & Saf. Code, § 25249.6).
24 A business can satisfy its obligations under Health and Safety Code section 25249.6 by the
25 tendering the requisite warnings through various means, e.g. labeling a consumer product,
26
27
28

1 posting signs, or publishing notices in a newspaper. This lawsuit concerns the warning
2 provision of Proposition 65 (Health & Saf. Code, § 25249.6).

3
4 23. A business must tender a warning for an exposure of a Listed Chemical unless it can
5 show that the exposure poses “no significant risk.” See Cal. Code Regs., tit. 22, §§ 12705, et
6 seq.

7 24. Proposition 65 specifically provides for a party to sue an alleged violator of Proposition
8 65 “in the public interest,” even if the suing party has not suffered a personal loss or harm
9 because of the alleged conduct. Such party suing in absence of any personal loss is, in the
10 parlance of Proposition 65, a Private Enforcer. A Private Enforcer is “[a]ny private person
11 proceeding ‘in the public interest’ pursuant to Health and Safety Code § 25249.7(d) . . . who
12 alleges the existence of violations of the Safe Drinking Water and Toxic Enforcement Act of
13 1986 . . .” (Cal. Code Regs., tit. 11, § 3000). CAG brings this action in the public interest as
14 a Private Enforcer.
15
16

17 25. Before bringing this action, CAG conducted research and investigations, by which it
18 learned that numerous manufacturers and distributors made available for sale in California
19 consumer products that contain Listed Chemicals, without giving Proposition 65 compliant
20 warnings that users of such products would suffer exposures to the constituent Listed
21 Chemicals of such products. Because of such research and investigations, CAG gave notice
22 of alleged violations of Proposition 65 subject to a private action (“Notice”) to numerous
23 manufacturers and distributors, including those described in the succeeding paragraphs.
24

25 **Bayer Advanced™ Fungus Control for Lawns**

26
27 26. On or about June 22, 2007, plaintiff gave Notice to Bayer Corporation and Bayer
28 CropScience LP (collectively, “Bayer”), alleging it is and has been the manufacturer or

1 distributor of Bayer Advanced™ Fungus Control for Lawns, a consumer product designed to
2 cure and prevent common lawn diseases. The Notice alleged that Bayer Advanced™ Fungus
3 Control for Lawns contains Triadimefon. On March 30, 1999, the Governor of California
4 added Triadimefon to the list of chemicals known to the State to cause Reproductive Toxicity
5 (developmental, female, male), which was more than twenty months before CAG served
6 Notice and after Triadimefon became subject fully to Proposition 65 warning requirements
7 and discharge prohibitions.
8

9
10 27. Plaintiff is informed, believes, and thereon alleges that Bayer exposed, knowingly and
11 intentionally, users of Bayer Advanced™ Fungus Control for Lawns and other persons to
12 Triadimefon without first giving clear and reasonable warning of such to the persons
13 exposed. Bayer thereby violated Proposition 65.

14
15 28. Users of Bayer Advanced™ Fungus Control for Lawns suffered inhalation and dermal
16 contact when applying product granules with a rotary/drop spreader onto desired surfaces and
17 users and others in proximity of such use inadvertently inhale fumes, mist, or granules of
18 product or allow bare skin to touch product or application surfaces immediately after
19 application.

20
21 **(i) Maxforce® Professional Insect Control® Roach Killer Bait Gel, (ii) Maxforce®**
22 **Professional Insect Control® Fine Granule Insect Bait, and (iii) Maxforce® Professional**
23 **Insect Control® Granular Insect Bait.**

24 29. On or about February 7, 2008, plaintiff gave Notices to Bayer, alleging it is and has been
25 the manufacturer or distributor of (i) Maxforce® Professional Insect Control® Roach Killer
26 Bait Gel, (ii) Maxforce® Professional Insect Control® Fine Granule Insect Bait, and (iii)
27 Maxforce® Professional Insect Control® Granular Insect Bait, consumer products designed
28

1 to kill insects. The Notice alleged that such products contain Hydramethylnon. On March 5,
2 1999, the Governor of California added Hydramethylnon to the list of chemicals known to
3 the State to cause Reproductive Toxicity (developmental, male), which was more than twenty
4 months before CAG served the Notices and after Hydramethylnon became subject fully to
5 Proposition 65 warning requirements and discharge prohibitions.
6

7 30. Plaintiff is informed, believes, and thereon alleges that Bayer exposed, knowingly and
8 intentionally, users of such products and other persons to Hydramethylnon without first
9 giving clear and reasonable warning of such to the persons exposed. Bayer thereby violated
10 Proposition 65.
11

12 31. Users of Maxforce® Professional Insect Control® Roach Killer Bait Gel suffer exposures
13 through dermal contact and inhalation when applying product with included injector directly
14 into small openings where roaches might be a problem and users and other in proximity
15 inadvertently touch product or breath in fumes from product.
16

17 32. Users of Maxforce® Professional Insect Control® Fine Granule Insect Bait and
18 Maxforce® Professional Insect Control® Granular Insect Bait suffer exposures via dermal
19 contact and inhalation when applying products on application areas or into refillable bait
20 stations, and users and others in proximity of such use inadvertently touch products or breath
21 fumes or powder from products.
22

23 **PreStrike™ Mosquito Repellent**

24 33. On or about December 11, 2006, plaintiff gave Notice to Central Garden & Pet Company
25 and Wellmark International alleging they are and have been the manufacturers or distributors
26 of PreStrike™ Mosquito Repellent, a consumer product designed for use on persons to repel
27 mosquitoes, gnats, biting flies, chiggers, ticks, and other flying insects. The Notice alleged
28

1 that PreStrike™ Mosquito Repellent contains Di-*n*-propyl isocinchomeronate (MGK
2 Repellent 326). On May 1, 1996, the Governor of California added Di-*n*-propyl
3 isocinchomeronate (MGK Repellent 326) to the list of chemicals known to the State to cause
4 cancer, which was more than twenty months before CAG served Notice and after Di-*n*-
5 propyl isocinchomeronate (MGK Repellent 326) became subject fully to Proposition 65
6 warning requirements and discharge prohibitions.
7

8 34. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
9 and Wellmark International exposed, knowingly and intentionally, users of PreStrike™
10 Mosquito Repellent to Di-*n*-propyl isocinchomeronate (MGK Repellent 326) and other
11 persons without first giving clear and reasonable warning of such to the persons exposed.
12 Central Garden & Pet Company and Wellmark International thereby violated Proposition 65.
13

14 35. Users of PreStrike™ Mosquito Repellent and others in proximity of such use suffer
15 exposures via dermal contact by applying the product to skin or clothing or by spraying small
16 amounts of product in palm of hand and then applying to face and neck.
17

18 **GardenTech™ Daconil® Fungicide Ready-To-Use**

19 36. On or about December 11, 2006, plaintiff gave Notice to Central Garden & Pet Company
20 and Gulfstream Home & Garden, Inc. alleging they are and have been the manufacturers or
21 distributors of GardenTech™ Daconil® Fungicide Ready-To-Use, a consumer product
22 designed for use on flowers, vegetables, shrubs, and fruit and shades trees, to control leaf
23 spots, rusts, blights, fruit rots, mildews, and other ornamental, vegetable, and fruit diseases.
24 The Notice alleged that GardenTech™ Daconil® Fungicide Ready-To-Use contains
25 Chlorothalonil. On January 1, 1989, the Governor of California added Chlorothalonil to the
26 list of chemicals known to the State to cause cancer, which was more than twenty months
27
28

1 before CAG served Notice and after Chlorothalonil became subject fully to Proposition 65
2 warning requirements and discharge prohibitions.

3
4 37. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
5 and Gulfstream Home & Garden, Inc exposed, knowingly and intentionally, users of
6 GardenTech™ Daconil® Fungicide Ready-To-Use to Chlorothalonil and other persons
7 without first giving clear and reasonable warning of such to the persons exposed. Central
8 Garden & Pet Company and Gulfstream Home & Garden, Inc thereby violated Proposition
9 65.
10

11 38. Users of GardenTech™ Daconil® Fungicide Ready-To-Use and others in proximity of
12 such use suffer exposures via inhalation when applying product directly onto vegetation by
13 means of sprayer nozzle included in the product's packaging and they inadvertently inhale
14 fumes, vapor, or mist of product. Persons also suffer exposures via dermal contact when they
15 allow bare skin to touch product as they dispense the same from the product's container via
16 the included spray nozzle (or they touch application surfaces on the affected plants
17 immediately after applying product).
18

19 **GardenTech™ Daconil® Fungicide Concentrate**

20
21 39. On or about June 22, 2006, plaintiff gave Notice to Central Garden & Pet Company and
22 Gulfstream Home & Garden, Inc. alleging they are and have been the manufacturers or
23 distributors of GardenTech™ Daconil® Fungicide Concentrate, a consumer product
24 designed for use on Flowers, Vegetables, Shrubs, Fruits and Trees, to control Leaf Spots,
25 Rust, Blights, Fruit Rots, and Mildews. The Notice alleged that GardenTech™ Daconil®
26 Fungicide Concentrate contains Chlorothalonil.
27
28

1 40. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
2 and Gulfstream Home & Garden, Inc. exposed, knowingly and intentionally, users of
3 GardenTech™ Daconil® Fungicide Concentrate and other persons to Chlorothalonil without
4 first giving clear and reasonable warning of such to the persons exposed. Central Garden &
5 Pet Company and Gulfstream Home & Garden, Inc thereby violated Proposition 65.
6

7 41. Users of GardenTech™ Daconil® Fungicide Concentrate and others in proximity of such
8 use suffer exposures via inhalation when diluting concentrate and spraying plant surfaces and
9 inadvertently breathing in vapor, mist, or fumes from product. Users and other persons in
10 proximity also suffer exposures through dermal contact when they allowed bare skin to touch
11 product as they dispense the same (or they touch application surfaces on affected plants
12 immediately after applying product).
13

14 **Lilly/Miller® Disease Control with Daconil®**

15 42. On or about June 28, 2007, plaintiff gave Notice to Central Garden & Pet Company
16 alleging it and has been the manufacturer or distributor of Lilly/Miller® Disease Control
17 with Daconil®, a consumer product designed for use in controlling diseases, including black
18 spot, red thread, and tomato blight, on roses, lawns, shrubs, fruits, and vegetables. The
19 Notice alleged that Lilly/Miller® Disease Control with Daconil® contains Chlorothalonil.
20
21

22 43. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
23 exposed, knowingly and intentionally, users of Lilly/Miller® Disease Control with Daconil®
24 and other persons to Chlorothalonil without first giving clear and reasonable warning of such
25 to the persons exposed. Central Garden & Pet Company thereby violated Proposition 65.
26

27 44. Users of Lilly/Miller® Disease Control with Daconil® and others in proximity of such
28 use suffer exposures via inhalation when diluting and applying product directly onto plants

1 using a sprayer and inadvertently inhale fumes, vapor, or mist of product. Persons also suffer
2 exposures via dermal contact when they allow bare skin to touch product while diluting
3 product or while dispensing product or by touching affected plant surfaces after applying
4 product.
5

6 **Maxide® Concentrate Multi Purpose Fungicide**

7 45. On or about December 11, 2006, plaintiff gave Notice to Central Garden & Pet
8 Company, Pennington Seed, Inc., and Excel Marketing, alleging they are and have been the
9 manufacturers or distributors of Maxide® Concentrate Multi Purpose Fungicide, a consumer
10 product designed for use to prevent or for control of diseases on shrubs, trees, fruits,
11 vegetables, and flowers. The Notice alleged that Maxide® Concentrate Multi Purpose
12 Fungicide contains Chlorothalonil.
13

14 46. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company,
15 Pennington Seed, Inc., and Excel Marketing exposed, knowingly and intentionally, users of
16 Maxide® Concentrate Multi Purpose Fungicide to Chlorothalonil without first giving clear
17 and reasonable warning of such to the persons exposed. Central Garden & Pet Company,
18 Pennington Seed, Inc., and Excel Marketing thereby violated Proposition 65.
19

20 47. Users of Maxide® Concentrate Multi Purpose Fungicide and others in proximity of such
21 use suffer exposures via inhalation when diluting and applying product directly onto plants
22 using a sprayer and inadvertently inhale fumes, vapor, or mist of product. Persons also suffer
23 exposures via dermal contact when they allow bare skin to touch product while diluting or
24 dispensing it, or by touching plant surfaces immediately after applying product.
25
26
27
28

Grant's Kills Ants® Total Ant Killer Bait

1
2 48. On or about December 11, 2006, plaintiff gave Notice to Central Garden & Pet Company
3 and Grant Laboratories, Inc. alleging they are and have been the manufacturers or
4 distributors of Grant's Kills Ants® Total Ant Killer Bait, a consumer product designed use
5 on lawns, golf courses, grounds, parks, ornamental gardens, and other noncropland for
6 control of acrobat ants, Argentine ants, bigheaded ants, carpenter ants, cornfield ants, crazy
7 ants, field ants, fire ants (imported and native), ghost ants, harvester ants, odorous house ants,
8 pavement ants, Pharaoh ants, thief ants, and the Texas leafcutting ant. The Notice alleged
9 that Grant's Kills Ants® Total Ant Killer Bait contains Hydramethylnon.
10
11

12 49. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
13 and Grant Laboratories, Inc. exposed, knowingly and intentionally, users of Grant's Kills
14 Ants® Total Ant Killer Bait and other persons to Hydramethylnon without first giving clear
15 and reasonable warning of such to the persons exposed. Central Garden & Pet Company and
16 Grant Laboratories, Inc. thereby violated Proposition 65.
17

18 50. Users of Grant's Kills Ants® Total Ant Killer Bait and others in proximity of such use
19 suffer exposures via inhalation caused when applying product onto likely locations of ant
20 colonies by using a disposable spoon or measuring cup, or broadcasting product over an area
21 by using spreader/seeder equipment and inadvertently inhale fumes or particles of product.
22 Persons also suffered exposures via dermal contact by allowing bare skin to touch product as
23 they dispense it from the product container (or touch areas on or around mounds after
24 applying product).
25
26
27
28

Amdro® Ant Block™ Home Perimeter Ant Bait and Amdro® Fire Ant Bait

1
2 51. On or about June 28, 2007, plaintiff gave Notices to Central Garden & Pet Company
3 alleging it is and has been the manufacturer or distributor of Amdro® Ant Block™ Home
4 Perimeter Ant Bait and Amdro® Fire Ant Bait, consumer products designed for use (i) as a
5 home perimeter treatment to kill acrobat ants, Argentine ants, bigheaded ants, carpenter ants,
6 cornfield ants, crazy ants, field ants, fire ants, ghost ants, harvester ants, odorous house ants,
7 pavement ants, Pharaoh ants, thief ants, and the Texas leafcutting ant, and (ii) on lawns,
8 landscaped areas, golf courses, commercial grounds, as well as on grounds surrounding
9 poultry houses (excluding runs and ranges) or corrals and other animal holding areas to kill
10 imported and native fire ants and other ants such as harvester ants, bigheaded ants, and
11 Argentine ants, respectively. The Notices alleged that Amdro® Ant Block™ Home
12 Perimeter Ant Bait and Amdro® Fire Ant Bait contain Hydramethylnon.
13
14

15
16 52. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
17 exposed, knowingly and intentionally, users of Amdro® Ant Block™ Home Perimeter Ant
18 Bait and Amdro® Fire Ant Bait, and other persons to Hydramethylnon without first giving
19 clear and reasonable warning of such to the persons exposed. Central Garden & Pet
20 Company thereby violated Proposition 65.
21

22 53. Users of Amdro® Ant Block™ Home Perimeter Ant Bait and others in proximity of such
23 use suffer exposures via inhalation when applying product to subject areas by using a
24 disposable spoon or measuring cup and users and inadvertently inhaling fumes or particles of
25 product. People also suffer exposures via dermal contact by allowing bare skin to touch
26 product as they dispense it (or touched application areas).
27
28

1 54. Users of Amdro® Fire Ant Bait and others in proximity of such use suffer exposures via
2 inhalation when applying product by sprinkling or broadcasting it over application areas
3 using a hand-held granular spreader and inadvertently inhale fumes or particles of product.
4 Persons also suffer exposures via dermal contact by allowing bare skin to touch product as
5 they dispense it from product container (or touch application areas).
6

7 **(i) Adams™ Flea & Tick Mist Insecticide, Repellent & Deodorant; (ii) Adams™ Pyrethrin**
8 **Dip with aloe vera extract, lanolin & sunscreens; (iii) Farnam Endure® Roll-On for**
9 **Horses; (iv) Farnam Equicare® Flysect® Super-C Repellent Concentrate; (v) Flys-Off®**
10 **Fly Repellent Ointment for Wounds and Sores; (vi) Farnam Mosquito Halt™ Repellent**
11 **Spray for Horses; (vii) Farnam Repel-X Lotion ® Fly Repellent For Horses And Ponies;**
12 **(viii) Farnam Roll-On™ Fly Repellent For Horses, Ponies & Dogs; and (ix) Farnam Swat®**
13 **Original Fly Repellant Ointment for Wounds and Sores and Farnam Swat® Clear**
14 **Formula Fly Repellant Ointment for Wounds and Sores.**
15
16

17 55. On or about December 11, 2006, plaintiff gave Notices to Central Garden & Pet
18 Company and Farnam Companies, Inc. alleging they are and have been the manufacturers or
19 distributors of (i) Adams™ Flea & Tick Mist Insecticide, Repellent & Deodorant; (ii)
20 Adams™ Pyrethrin Dip with aloe vera extract, lanolin & sunscreens; (iii) Farnam Endure®
21 Roll-On for Horses; (iv) Farnam Equicare® Flysect® Super-C Repellent Concentrate; (v)
22 Flys-Off® Fly Repellent Ointment for Wounds and Sores; (vi) Farnam Mosquito Halt™
23 Repellent Spray for Horses; (vii) Farnam Repel-X Lotion ® Fly Repellent For Horses And
24 Ponies; (viii) Farnam Roll-On™ Fly Repellent For Horses, Ponies & Dogs; and (ix) Farnam
25 Swat® Original Fly Repellant Ointment for Wounds and Sores and Farnam Swat® Clear
26 Formula Fly Repellant Ointment for Wounds and Sores, consumer products designed for use
27
28

1 (i) on animals to kill fleas, ticks, and lice; and to repel temporarily flies, gnats, and
2 mosquitoes; (ii) on dogs and cats to kill and repel fleas, ticks, lice, gnats, mosquitoes, and
3 flies; (iii) to protect horses from house flies, face flies, horse flies, stable flies, black flies,
4 deer flies, lice and ticks and from biting gnats such as punkies and no-see-ums; (iv) on horses
5 for immediate and temporary control of face flies, stable flies, horse flies, deer flies,
6 mosquitoes, gnats, mites, chiggers, lice, and houseflies; (v) on animals, including horses, to
7 repel horse flies, stable flies, face flies, and horn flies from wounds and open sores; (vi) on
8 horses for immediate and residual control of face flies, stable flies, and houseflies, and also
9 repels mosquitoes that may transmit West Nile Virus or equine encephalitides; (vii) to protect
10 horses from House Flies, Face Flies, Horn Flies, Stable Flies, Black Flies, Horse Flies, Deer
11 Flies, Lice and Ticks, and from biting gnats such as Punkies and No-see-ums; (viii) to repel
12 and kill houseflies, stable flies, face flies, and horn flies from sensitive areas of the face and
13 head of horses and ponies; and (ix) as fly repellants on horses for wounds and sores,
14 respectively. The Notices alleged that such products contain Di-*n*-propyl isocinchomeronate
15 (MGK Repellent 326).
16

17
18
19 56. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
20 and Farnam Companies, Inc. exposed, knowingly and intentionally, users of such products to
21 Di-*n*-propyl isocinchomeronate (MGK Repellent 326) without first giving clear and
22 reasonable warning of such to the persons exposed. Central Garden & Pet Company and
23 Farnam Companies, Inc. thereby violated Proposition 65.
24

25 57. Users of the products referenced in paragraphs 55 suffer exposures via inhalation and
26 dermal contact by means similar to those described in paragraphs 32, 35, 28, 41, 44, 47, 50,
27 53, and 54 of this complaint.
28

Four Paws® Super Fly Repellent™

1
2 58. On or about December 11, 2006, plaintiff gave Notice to Central Garden & Pet Company
3 and Four Paws Products, Ltd. alleging they are and have been the manufacturers or
4 distributors of Four Paws® Super Fly Repellent™, a consumer product designed for use on
5 dogs, cats, and horses to repel mosquitoes that can transmit heartworm. The Notice alleged
6 that Four Paws® Super Fly Repellent™ contains Di-*n*-propyl isocinchomeronate (MGK
7 Repellent 326).
8

9
10 59. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
11 and Four Paws Products, Ltd. exposed, knowingly and intentionally, users of Four Paws®
12 Super Fly Repellent™ to Di-*n*-propyl isocinchomeronate (MGK Repellent 326) without first
13 giving clear and reasonable warning of such to the persons exposed. Central Garden & Pet
14 Company and Four Paws Products, Ltd. thereby violated Proposition 65.
15

16 60. Users of Four Paws® Super Fly Repellent™ and others in proximity of such use suffered
17 exposures via inhalation when spraying product on dogs, cats, and horses and inadvertently
18 inhaling fumes from product. Persons also suffer exposure via dermal contact by allowing
19 bare skin to touch product when still wet, either while dispensing product from its container
20 or touching subject animals immediately after application.
21

22 **Zodiac® Triple Action Flea & Tick Shampoo for Dogs, Puppies, Cats, and Kittens**

23 61. On or about December 11, 2006, plaintiff gave Notice to Central Garden & Pet Company
24 and Wellmark International alleging they are and have been the manufacturers or distributors
25 of Zodiac® Triple Action Flea & Tick Shampoo for Dogs, Puppies, Cats, and Kittens, a
26 consumer product designed for use on dogs, cats, puppies, and kittens to kill fleas, ticks, and
27 lice on contact and to repel gnats, flies, and mosquitoes. The Notice alleged that Zodiac®
28

1 Triple Action Flea & Tick Shampoo for Dogs, Puppies, Cats, and Kittens contains Di-
2 propyl isocinchomeronate (MGK Repellent 326).

3
4 62. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
5 and Wellmark International exposed, knowingly and intentionally, users of Zodiac® Triple
6 Action Flea & Tick Shampoo for Dogs, Puppies, Cats, and Kittens to Di-*n*-propyl
7 isocinchomeronate (MGK Repellent 326) without first giving clear and reasonable warning
8 of such to the persons exposed. Central Garden & Pet Company and Wellmark International
9 thereby violated Proposition 65.

10
11 63. Users of Zodiac® Triple Action Flea & Tick Shampoo for Dogs, Puppies, Cats, and
12 Kittens and others in proximity of such use suffer exposures via dermal contact when
13 applying product on subject animals and thereby allowing bare skin to touch product directly
14 or hair of subject animal while still moist with lathered shampoo.

15
16 **Prevent™ Mosquito Repellent**

17 64. On or about June 28, 2007, plaintiff gave Notice to Central Garden & Pet Company
18 alleging it is and has been the manufacturer or distributor of Prevent™ Mosquito Repellent, a
19 consumer product designed for use on persons to repel mosquitoes, gnats, biting flies,
20 chiggers, ticks, black flies, fleas, and other flying insects. The Notice alleged that Prevent™
21 Mosquito Repellent contains Di-*n*-propyl isocinchomeronate (MGK Repellent 326).

22
23 65. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
24 exposed, knowingly and intentionally, users of Prevent™ Mosquito Repellent to Di-*n*-propyl
25 isocinchomeronate (MGK Repellent 326) without first giving clear and reasonable warning
26 of such to the persons exposed. Central Garden & Pet Company thereby violated Proposition
27
28

1 66. Users of Prevent™ Mosquito Repellent suffer exposures via dermal contact by applying
2 product to skin or clothing via its aerosol canister, or by spraying product in hand and then
3 applying to body. Persons also suffered exposures via inhalation by inadvertently inhaling
4 product spray, fumes, or mist.
5

6 **Grant's Kills Ants® Grant's Ant Control**

7 67. On or about June 28, 2007, plaintiff gave Notice to Central Garden & Pet Company and
8 Grant Laboratories, Inc. alleging they are and have been the manufacturers or distributors of
9 Grant's Kills Ants® Grant's Ant Control, a consumer product designed for use in destroying
10 ant colonies from interior and exterior locations. The Notice alleged that Grant's Kills
11 Ants® Grant's Ant Control contains Arsenic (inorganic oxides). On May 1, 1997, the
12 Governor of California added Arsenic (inorganic oxides) to the list of chemicals known to
13 the State to cause reproductive toxicity, developmental, which was more than twenty months
14 before CAG served Notice and after Arsenic (inorganic oxides) became subject fully to
15 Proposition 65 warning requirements and discharge prohibitions.
16
17

18 68. Plaintiff is informed, believes, and thereon alleges that Central Garden & Pet Company
19 and Grant Laboratories, Inc. exposed, knowingly and intentionally, users of Grant's Kills
20 Ants® Grant's Ant Control to Arsenic (inorganic oxides) without first giving clear and
21 reasonable warning of such to the persons exposed. Central Garden & Pet Company and
22 Grant Laboratories, Inc. thereby violated Proposition 65.
23

24 69. Users of Grant's Kills Ants® Grant's Ant Control and others in proximity of such use
25 suffer exposures through inhalation and dermal contact when placing the product in the
26 periphery of homes, and under sinks, behind appliances, and along ant trails in inaccessible
27 areas and by touching the bait station with their hands or arms without wearing protective
28

1 gloves or then putting hands exposed to the product into their mouths or by breathing in
2 fumes or particulate matter from product when laying it roughly on a surface. Exposures also
3 occur when the bait stations are in areas accessible to children and children suffer exposures
4 by touching the product with their hands or arms and also by putting their hands or arms in
5 their mouths after touching the product or by placing the product directly in their mouths or
6 by breathing in fumes or particulate matter emanating from the product.
7

8 **Spectracide Immunox® Plus Insect & Disease Control Spray**

9
10 70. On or about December 11, 2006, plaintiff gave Notice to Spectrum Brands, Inc. and
11 United Industries Corporation alleging they are and have been the manufacturers or
12 distributors of Spectracide Immunox® Plus Insect & Disease Control Spray, a consumer
13 product designed for control of destructive diseases and insects in lawns, roses, flowers,
14 ornamental shrubs, and trees. The Notice alleged that Spectracide Immunox® Plus Insect &
15 Disease Control Spray contains Myclobutanil. On April 16, 1999, the Governor of California
16 added Myclobutanil to the list of chemicals known to the State to cause Reproductive
17 Toxicity (developmental, male), which was more than twenty months before CAG served
18 Notice and after Myclobutanil became subject fully to Proposition 65 warning requirements
19 and discharge prohibitions.
20
21

22 71. Plaintiff is informed, believes, and thereon alleges that Spectrum Brands, Inc. and United
23 Industries Corporation exposed, knowingly and intentionally, users of Spectracide
24 Immunox® Plus Insect & Disease Control Spray to Myclobutanil without first giving clear
25 and reasonable warning of such to the persons exposed. Spectrum Brands, Inc. and United
26 Industries Corporation thereby violated Proposition 65.
27
28

1 72. Users of Spectracide Immunox® Plus Insect & Disease Control Spray and others in
2 proximity of such use suffer exposures through inhalation and dermal contact caused by
3 spraying product on vegetation and inadvertently inhaling fumes, mist, or vapor of product or
4 allowing bare skin to touch product while it is still wet, either by touching the product spray
5 or touching affected shrubbery immediately after applying product.
6

7 **Schultz® Fungicide Plus, Disease Plus Insect Control**

8 73. On or about October 2, 2007, plaintiff gave Notice to Spectrum Brands, Inc. and United
9 Industries Corporation alleging they are and have been the manufacturers or distributors of
10 Schultz® Fungicide Plus, Disease Plus Insect Control, a consumer product designed for use
11 in protecting roses, flowers, and ornamental shrubs by preventing and curing black spot, rust,
12 powdery mildew, blight, and other diseases, as well as by killing harmful insects on contact.
13 The Notice alleged that Schultz® Fungicide Plus, Disease Plus Insect Control contains
14 Myclobutanil.
15
16

17 74. Plaintiff is informed, believes, and thereon alleges that Spectrum Brands, Inc. and United
18 Industries Corporation exposed, knowingly and intentionally, users of Schultz® Fungicide
19 Plus, Disease Plus Insect Control to Myclobutanil without first giving clear and reasonable
20 warning of such to the persons exposed. Spectrum Brands, Inc. and United Industries
21 Corporation thereby violated Proposition 65.
22

23 75. Users of Schultz® Fungicide Plus, Disease Plus Insect Control and others in proximity of
24 such use suffer exposures by spraying product on vegetation and inadvertently inhaling
25 fumes, mist, vapor of product or allowing bare skin to touch product while still wet, either by
26 touching the product spray or touching affected surfaces immediately after application.
27
28

Country Vet Mosquito & Fly Foam for Horses

1
2 76. On or about December 11, 2006, plaintiff gave Notice to Waterbury Companies, Inc.
3 alleging it is and has been the manufacturer or distributor of Country Vet Mosquito & Fly
4 Foam for Horses, a consumer product designed for temporary protection of horses from
5 attack by Horse Flies, Horn Flies, Stable Flies, Deer Flies, House Flies, Mosquitoes, and
6 Gnats. The Notice alleged that Country Vet Mosquito & Fly Foam for Horses contains Di-*n*-
7 propyl isocinchomeronate (MGK Repellent 326).
8

9
10 77. Plaintiff is informed, believes, and thereon alleges that Waterbury Companies, Inc.
11 exposed, knowingly and intentionally, users of Country Vet Mosquito & Fly Foam for
12 Horses to Di-*n*-propyl isocinchomeronate (MGK Repellent 326) without first giving clear
13 and reasonable warning of such to the persons exposed. Waterbury Companies, Inc. thereby
14 violated Proposition 65.
15

16 78. Users of Country Vet Mosquito & Fly Foam for Horses and others in proximity of such
17 use suffer exposures via dermal contact caused by applying the foam-type product onto
18 portions of horses where flies gather or applying to regions where attacking insects feed, and
19 thereby persons touch product with their bare skin or touch areas of animal coated with
20 product while still wet.
21

Green Thumb® Ready-To-Use Grass & Weed Killer

22
23 79. On or about June 28, 2007, plaintiff gave Notice to Spectrum Brands, Inc. and United
24 Industries Corporation alleging they are and have been the manufacturers or distributors of
25 Green Thumb® Ready-To-Use Grass & Weed Killer, a consumer product designed for use in
26 killing all types of weeds and grasses on flower beds, walkways, driveways, and other areas.
27 The Notice alleged that Green Thumb® Ready-To-Use Grass & Weed Killer contains
28

1 Fluazifop butyl. On November 6, 1998, the Governor of California added Fluazifop butyl to
2 the list of chemicals known to the State to cause Reproductive Toxicity (developmental),
3 which was more than twenty months before CAG served Notice and after Fluazifop butyl
4 became subject fully to Proposition 65 warning requirements and discharge prohibitions.
5

6 80. Plaintiff is informed, believes, and thereon alleges that Spectrum Brands, Inc. and United
7 Industries Corporation exposed, knowingly and intentionally, users of Green Thumb®
8 Ready-To-Use Grass & Weed Killer to Fluazifop butyl without first giving clear and
9 reasonable warning of such to the persons exposed. Spectrum Brands, Inc. and United
10 Industries Corporation thereby violated Proposition 65.
11

12 81. Users of Green Thumb® Ready-To-Use Grass & Weed Killer and others in proximity of
13 such use suffer exposures to Fluazifop butyl through inhalation and dermal contact caused by
14 the spraying of product from provided nozzle spray container onto desired surfaces and such
15 persons inadvertently inhale fumes, mist, or vapor of product or allow bare skin to touch
16 product while it is still wet, either by touching the product spray or touching application
17 surfaces immediately after applying product, thereby allowing bare skin to touch the solution
18 containing Fluazifop butyl.
19

20 **Spectracide Immunox® Multi-Purpose Fungicide Spray Concentrate**
21

22 82. On or about December 12, 2006, plaintiff gave Notice to Spectrum Brands, Inc. and
23 United Industries Corporation alleging they are and have been the manufacturers or
24 distributors of Spectracide Immunox® Multi-Purpose Fungicide Spray Concentrate, a
25 consumer product designed for use on Roses, Flowers, Ornamental Shrubs, Trees, and Lawns
26 to prevent and cure all major diseases affecting such flora, including brown patch, powdery
27
28

1 mildew, black spot, and rust. The Notice alleged that Spectracide Immunox® Multi-Purpose
2 Fungicide Spray Concentrate contains Myclobutanil.

3 83. Plaintiff is informed, believes, and thereon alleges that Spectrum Brands, Inc. and United
4 Industries Corporation exposed, knowingly and intentionally, users of Spectracide
5 Immunox® Multi-Purpose Fungicide Spray Concentrate to Myclobutanil without first giving
6 clear and reasonable warning of such to the persons exposed. Spectrum Brands, Inc. and
7 United Industries Corporation thereby violated Proposition 65.

8
9 84. Users of Spectracide Immunox® Multi-Purpose Fungicide Spray Concentrate and others
10 in proximity of such use suffer exposures to Myclobutanil by spraying product (via a pump-
11 up sprayer or trigger bottle sprayer, dial-style hose-end sprayer, or concentrate plus water-
12 style sprayer) on Roses, Flowers, Ornamental Shrubs, Trees, and Lawns, and they
13 inadvertently inhale fumes, vapor, or mist of product, or allow bare skin to touch product
14 while it is still wet, either by touching the product spray or touching affected shrubbery
15 immediately after applying the product, thereby allowing bare skin of user to touch the
16 solution containing Myclobutanil.

17
18
19 **Spectracide® TripleStrike™ Grass Weed Root Killer Ready-To-Use**

20 85. On or about June 28, 2007, plaintiff gave Notice to Spectrum Brands, Inc. and United
21 Industries Corporation alleging they are and have been the manufacturers or distributors of
22 Spectracide® TripleStrike™ Grass Weed Root Killer Ready-To-Use, a consumer product
23 designed for use in killing all types of weeds and grasses on patios, walkways and driveways;
24 around flowers, shrubs and trees; along fences and foundations. The Notice alleged that
25 Spectracide® TripleStrike™ Grass Weed Root Killer Ready-To-Use contains Fluazifop
26 butyl.
27
28

1 86. Plaintiff is informed, believes, and thereon alleges that Spectrum Brands, Inc. and United
2 Industries Corporation exposed, knowingly and intentionally, users of Spectracide®
3 TripleStrike™ Grass Weed Root Killer Ready-To-Use to Fluazifop butyl without first giving
4 clear and reasonable warning of such to the persons exposed. Spectrum Brands, Inc. and
5 United Industries Corporation thereby violated Proposition 65.
6

7 87. Users of Spectracide® TripleStrike™ Grass Weed Root Killer Ready-To-Use and others
8 in proximity of such use suffer exposures to Fluazifop butyl through inhalation and dermal
9 contact caused by the spraying of product from provided container onto desired surfaces and
10 users and others in proximity inadvertently inhale fumes, mist, or vapor of product or allow
11 bare skin to touch product while it is still wet, either by touching the product spray or
12 touching affected surfaces immediately after applying product, thereby allowing bare skin of
13 user and others in proximity to touch the solution containing Fluazifop butyl.
14
15

16 **Spectracide® Weed and Grass Killer**

17 88. On or about February 8, 2008, plaintiff gave Notice to Spectrum Brands, Inc. and United
18 Industries Corporation alleging they are and have been the manufacturers or distributors of
19 Spectracide® Weed and Grass Killer, a consumer product designed for use in killing
20 common weeds and grasses around shrubs and trees, in flowerbeds and on patios, walkways.
21 The Notice alleged that Spectracide® Weed and Grass Killer contains Fluazifop butyl.
22

23 89. Plaintiff is informed, believes, and thereon alleges that Spectrum Brands, Inc. and United
24 Industries Corporation exposed, knowingly and intentionally, users of Spectracide® Weed
25 and Grass Killer to Fluazifop butyl without first giving clear and reasonable warning of such
26 to the persons exposed. Spectrum Brands, Inc. and United Industries Corporation thereby
27 violated Proposition 65.
28

1 90. Users of Spectracide® Weed and Grass Killer and others in proximity of such use suffer
2 exposures to Fluazifop butyl through inhalation and dermal contact caused by the spraying of
3 product from provided container onto desired surfaces and such persons inadvertently inhale
4 fumes, mist, or vapor of product or allow bare skin to touch product while it is still wet,
5 either by touching the product spray or touching affected surfaces immediately after applying
6 product, thereby allowing bare skin to touch the solution containing Fluazifop butyl.
7

8 **Continuing Nature of Violations**

9
10 91. As to each of the above products, defendants' violations of Proposition 65 have been
11 ongoing and continuous and have continued from three years prior to the sending of each
12 respective notice through the date of the signing of this complaint.
13

14 **Certificates of Merit**

15 92. The aforementioned Notices included certificates of merit executed by the attorney for
16 the noticing party. The certificates of merit stated that the attorney for plaintiff who executed
17 the certificate had consulted with at least one person with relevant and appropriate expertise
18 who had reviewed data regarding the exposures to the Listed Chemicals alleged in this
19 action. Based on that information, such attorney believed there was a reasonable and
20 meritorious case for this private action. Such attorney attached to the certificates of merit
21 served on the Attorney General information sufficient to establish the basis of the certificates
22 of merit.
23

24 93. Plaintiff is commencing this action more than sixty days, plus ten days for mailing, from
25 the date plaintiff sent the Notices to the respective defendants, the Attorney General, and
26 applicable district attorneys and city attorneys in whose jurisdictions the violations allegedly
27 occurred.
28

1 94. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General nor
2 any applicable district attorney or city attorney has commenced and is diligently prosecuting
3 an action against any of the violations alleged.
4

5 95. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that
6 results from a person's acquisition, purchase, storage, consumption, or other reasonably
7 foreseeable use of a consumer good. The products identified in the foregoing paragraphs are
8 consumer products. As detailed in foregoing paragraphs, the reasonably foreseeable use of
9 the products causes exposure to Listed Chemicals.
10

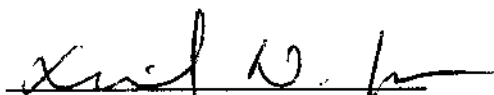
11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each defendant as follows:

- 13 1. A permanent injunction mandating Proposition 65 complaint warnings;
14 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b) of
15 \$2,500.00 per day per violation;
16 3. Costs of suit;
17 4. Reasonable attorney fees and costs; and
18 5. Any further relief that the court may deem just and equitable.
19
20

21 Dated: June 5, 2008

YEROUSHALMI & ASSOCIATES

23 

24 Daniel Cho
25 Attorney for Plaintiff,
26 Consumer Advocacy Group, Inc.
27
28