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REUBEN YEROUSHALMI (State Bar No. 193981)  
Yeroushalmi & Associates  
3700 Wilshire Boulevard, Suite 4800  
Los Angeles, California 90010  
Telephone: (213) 382-3183  
Facsimile: (213) 382-3430

Counsel for Plaintiff  
Consumer Advocacy Group, Inc.

**ORIGINAL FILED**  
REC'D

OCT 08 2009  
AUG 18 2009  
FLING WINDOW

**LOS ANGELES  
SUPERIOR COURT**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

**CONSUMER ADVOCACY GROUP,  
INC.,**

Plaintiff,

v.

**WELLMARK INTERNATIONAL, INC.,  
et al.,**

Defendants.

CASE No. BC392118

[PROPOSED] CONSENT JUDGMENT

(Health and Safety Code § 25249 et seq.)

**1. INTRODUCTION**

**1.1 Plaintiff:** The Plaintiff is Consumer Advocacy Group, Inc. ("CAG" or "Plaintiff"), a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. CAG is dedicated to, among other causes, protecting the environment, improving human health, and supporting environmentally sound practices.

**1.2 Defendants:** The Defendants are Bayer Corporation and Bayer CropScience LP, (collectively, "Bayer"); Central Garden and Pet Company, Inc. and its affiliated companies, Excel Marketing ("Excel"), Farnam Companies, Inc. ("Farnam"), Four Paws Products, Ltd. ("Four Paws"), Grant Laboratories, Inc. ("Grant"), Gulfstream Home & Garden, Inc.

[PROPOSED] CONSENT JUDGMENT

**COPY**

1 ("Gulfstream"), Pennington Seed, Inc. ("Pennington") and Wellmark International ("Wellmark")  
2 (collectively, "Central Garden"); Spectrum Brands, Inc. and United Industries Corporation,  
3 (collectively, "Spectrum"); and Waterbury Companies, Inc. ("Waterbury").

4 **1.3 The Parties:** Plaintiff and Defendants are sometimes referred to herein as the  
5 "Parties."

6 **1.4 The Action:** This action ("Action") is brought under Proposition 65, the popular  
7 name for California's Safe Drinking Water and Toxic Enforcement Act of 1986, *Cal. Health and*  
8 *Safety Code* Section 25249.5 *et seq.* (sometimes referred to as "the Act"). Plaintiff proceeds  
9 under Section 25249.7(d) as a "person in the public interest." Solely for purposes of this Consent  
10 Judgment, the Parties stipulate that Plaintiff's Notices of Intent to Sue, listed at Exhibit A to this  
11 Consent Judgment and attached at Tabs 1-30 thereto ("Plaintiff's Notices") were served upon  
12 Defendants and public prosecutors, including the Attorney General and all district attorneys and  
13 city attorneys authorized to prosecute an action to enforce the Act, accompanied by certificates of  
14 merit, in compliance with Section 25249.7(d)(1) of the Act. Plaintiff is allowed to proceed  
15 pursuant to Section 25249.7(d)(2), because none of those public officials commenced an action  
16 pursuant to Plaintiff's Notices.

17 **1.5 The Complaint.** On June 5, 2008, Plaintiff filed a complaint against Defendants  
18 in the Superior Court for the City and County of Los Angeles ("Complaint") alleging that  
19 Defendants violated Proposition 65 by exposing individuals in California to one or more of the  
20 chemicals known as di-n-propyl isocinchomeronate, chlorothalonil, hydramethylnon,  
21 myclobutanil, triadimefon, fluazifop butyl, and/or arsenic, all of which have been designated  
22 under the Act as "known to the State of California to cause cancer or reproductive toxicity"  
23 within the meaning of Section 25249.8(b) (the "Covered Chemicals"), without providing  
24 Proposition 65 warnings to such individuals, as alleged to be required under Section 25249.6.  
25 According to the Complaint, the alleged exposures to the Covered Chemicals occur when  
26 individuals in California use or apply certain home and garden products that are manufactured,  
27 packaged, distributed, marketed and/or sold by Defendants for use in California. These products  
28

1 are identified with specificity in Plaintiff's Notices and the Complaint, and such products, as  
2 identified in Plaintiff's Notices, are referred to collectively herein as the "Covered Products."

3       **1.6 Jurisdiction:** Solely for purposes of this Consent Judgment, the Parties stipulate  
4 that the Court has personal jurisdiction over Defendants as to the acts alleged in the Action; that  
5 venue is proper in the City and County of Los Angeles; that the claims in the Action present a live  
6 controversy as to the application of Proposition 65 to the Covered Products and the Covered  
7 Chemicals therein; that this Court has jurisdiction to enter this Consent Judgment as a resolution  
8 of all claims alleged in the Action; and that the Court shall retain jurisdiction to implement the  
9 Consent Judgment.

10       **1.7 The Standard for Determining Whether Proposition 65 Warnings Are**  
11 **Required:** Section 25249.6 of Proposition 65 provides that "[n]o person in the course of  
12 business shall knowingly and intentionally expose any individual to a chemical known to the state  
13 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
14 individual, except as provided in Section 25429.10." Section 25249.10(c), under the heading  
15 "Exemptions from Warning Requirement," provides that Section 25249.6 "shall not apply" to an  
16 "exposure for which the person responsible can show that the exposure poses no significant risk  
17 assuming lifetime exposure at the level in question for substances known to the state to cause  
18 cancer, and that the exposure will have no observable effect assuming exposure at one thousand  
19 (1000) times the level in question for substances known to the state to cause reproductive toxicity,  
20 based on evidence and standards of comparable scientific validity to the evidence and standards  
21 which form the scientific basis for the listing of such chemical . . . . In any action brought to  
22 enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this  
23 subdivision shall be on the defendant." Proposition 65 thus makes it unlawful for a person  
24 subject to the Act to expose an individual in California to a Proposition 65-listed chemical  
25 without first providing a Proposition 65 warning unless an exemption to this requirement applies.  
26 Where the defendant asserts an exemption because the alleged exposure is beneath the level that  
27 would require a warning, the burden of proof is on the defendant to establish that the exemption  
28 applies.

1           **1.8 Settlement.** The first of Plaintiff's Notices was issued in December 2006. The  
2 Parties began engaging in informal discovery shortly thereafter and have been engaged in  
3 extensive negotiations almost continually since that time. As a result of this exchange of  
4 information, the Parties agree on some aspects of the allegations, but disagree as to several other  
5 aspects, and thus disagree as to whether Defendants have violated Proposition 65. Specifically,  
6 the Parties agree that each of the Covered Products contains one of the Covered Chemicals, and  
7 that none of the Defendants has distributed Proposition 65 warnings with respect to the Covered  
8 Products. The Defendants dispute, however, that the manufacture, packaging, distribution,  
9 marketing, sale or use of the Covered Products results in the exposure of individuals in California  
10 (or elsewhere) to the Covered Chemicals in amounts, if any, that would require a warning under  
11 Proposition 65. Defendants also assert other affirmative defenses. In support of their assertions,  
12 Defendants have presented scientific evidence to demonstrate that any exposure to the Covered  
13 Chemicals that results from any reasonably anticipated use of the Covered Products, in the words  
14 of Section 25249.10(c), "poses no significant risk assuming lifetime exposure at the level in  
15 question for substances known to the state to cause cancer, and that the exposure will have no  
16 observable effect assuming exposure at one thousand (1000) times the level in question for  
17 substances known to the state to cause reproductive toxicity, based on evidence and standards of  
18 comparable scientific validity to the evidence and standards which form the scientific basis for  
19 the listing of such chemical . . . ." Plaintiff disputes Defendants' assertions. In support of its  
20 position, Plaintiff has presented evidence to dispute Defendants' evidence with respect to some of  
21 the Covered Chemicals and Covered Products, and asserts that this evidence also demonstrates  
22 that Defendants' evidence with respect to all of the Covered Chemicals and Covered Products  
23 does not satisfy Defendant's burden under Section 25249.6. Therefore, in order to avoid  
24 prolonged litigation and the waste of private and judicial resources that would arise from  
25 prosecuting, defending, and adjudicating the issues on which the Plaintiff and Defendants  
26 disagree, the Parties have agreed, subject to the approval of the Court (and, as to Spectrum, either  
27 the approval of the Bankruptcy Court or Spectrum's emergence from bankruptcy as set forth in  
28 greater detail in Section 6 of this Consent Judgment) to compromise their disputed claims and

1 defenses, and have entered into a settlement agreement, the terms of which are embodied in this  
2 Consent Judgment.

3       **1.9 No Admissions:** Neither the Consent Judgment nor any of its provisions shall be  
4 construed as an admission by any Party of any fact, finding, issue of law, or violation of law,  
5 including Proposition 65 or any other statute, regulation, or common law requirement related to  
6 exposure to the Covered Chemicals or other chemicals listed under Proposition 65 from the  
7 Covered Products. By executing this Consent Judgment and agreeing to provide the relief and  
8 remedies specified herein, Defendants do not admit that this Action is not preempted by Federal  
9 law, or that Defendants have committed any violations of Proposition 65, or any other law or  
10 legal duty and specifically deny that they have committed any such violations. Defendants  
11 maintain that all Covered Products distributed, marketed and/or sold by Defendants in California  
12 have at all times been in compliance with Proposition 65. Nothing in this Consent Judgment shall  
13 prejudice, waive, or impair any right, remedy, or defense that Plaintiff and Defendants may have  
14 in any other or in future legal proceedings unrelated to these proceedings. Defendants reserve all  
15 of their rights and defenses with regard to any claim by any person under Proposition 65 or  
16 otherwise. Nevertheless, this paragraph shall not diminish or otherwise affect the obligations,  
17 responsibilities, waivers, releases, and/or duties provided for under this Consent Judgment.

18 **2. INJUNCTIVE RELIEF**

19       In the spirit of settlement and compromise, and in order to promote the public interest,  
20 Defendants have agreed to limit the distribution and sale of some of the Covered Products and to  
21 take certain measures to enhance the safe use of certain other Covered Products by enhancing the  
22 directions for their use. The Parties have agreed to these measures with the mutual understanding  
23 and expectation that as to such Covered Products, such measures will be effective to reduce and  
24 mitigate potential exposure to the Covered Chemicals, to ensure that any exposure to the Covered  
25 Chemicals is below the levels described at Section 25249.10(c) of the Act, as recited above. Each  
26 Party is only responsible under this Consent Judgment for measures specifically agreed to by that  
27 Party below and has no obligation to ensure compliance by any other Party.

1           2.1 Bayer has agreed to the following measures with respect to the Covered Products  
2 described below:

3           (a) *Bayer Advanced™ Fungus Control for Lawns*: The Plaintiff alleged in its Notice  
4 to Bayer dated June 22, 2007 that the use of this Covered Product results in exposure to the  
5 chemical triadimefon when this Covered Product is used in California to prevent the growth of  
6 fungus on lawns ("residential turf"). Subject to paragraph 2.5 of this Consent Judgment, Bayer  
7 has agreed to cease the sale of this Covered Product for use on residential turf in the United  
8 States, including California, after December 31, 2008. Such use will not be reinstated unless such  
9 use is approved by the US Environmental Protection Agency and California's Department of  
10 Pesticide Regulation. If such use were to be reinstated, then, subject to paragraph 2.6 of this  
11 Consent Judgment, Bayer will (a) change the precautionary statements on the label for this  
12 Covered Product, and for any other Covered Product that contains this Covered Chemical that  
13 Bayer may market for use in California, to include the following statement: "Wash thoroughly  
14 with soap and water after handling, and before eating, drinking, chewing gum, using tobacco, or  
15 using the toilet," and (b) add the following statement to the use instructions: " Wash hands with  
16 soap and water promptly after use," and "Do not allow people or pets to contact treated areas until  
17 dry," and (c) enhance the use instruction at subparagraph (b) by use of bold print and/or a  
18 pictogram at Bayer's option.

19           (b) *Maxforce® Professional Insect Control® Roach Killer Bait Gel, Maxforce®*  
20 *Professional Insect Control® Fine Granule Insect Bait, and Maxforce Professional Insect*  
21 *Control® Granular Insect Bait*: Plaintiff alleged in its Notices to Bayer dated February 7, 2008  
22 that the use of these Covered Products result in exposure to the chemical hydramethylnon when  
23 these Covered Products are used in California to repel or kill insects. Subject to paragraph 2.6 of  
24 this Consent Judgment, Bayer has agreed to (a) change the precautionary statements on the label  
25 for this Covered Product, and for any other Covered Product that contains this Covered Chemical  
26 that Bayer may market for use in California, to include the following statement: "Wash  
27 thoroughly with soap and water after handling, and before eating, drinking, chewing gum, using  
28 tobacco, or using the toilet," and (b) add the following statement to the use instructions: " Wash

1 hands with soap and water promptly after use," and (c) enhance the use instruction at  
2 subparagraph (b) by use of bold print and/or a pictogram at Bayer's option.

3 2.2. Central Garden & Pet Company, Inc. (and, where applicable, its affiliated  
4 companies, Wellmark, Gulfstream, Grant, Pennington, Excel, Farnam, and Four Paws) has (have)  
5 agreed to the following measures with respect to the Covered Products described below:

6 (a) ***PreStrike Mosquito Repellant***: Plaintiff alleged in its Notice to Central Garden &  
7 Pet Company, Inc. and Wellmark, dated December 11, 2006, that the use of this Covered Product  
8 results in exposure to the chemical di-n-propyl isocinchomeronate when this Covered Product is  
9 used on the skin to repel mosquitoes, gnats, biting flies, chiggers, ticks, and other flying insects.  
10 Subject to paragraph 2.5 of this Consent Judgment, Central Garden & Pet Company, Inc. and  
11 Wellmark have agreed not to distribute or sell this Covered Product in California after the  
12 Effective Date (as defined at paragraph 2.5 below) of this Consent Judgment unless the company  
13 includes on the label a Proposition 65 warning in the manner described at Title 22 of the  
14 California Code of Regulations, Article 6, § 12601(b), or the company reformulates this Covered  
15 Product so that it no longer includes any of the Covered Chemicals.

16 (b) ***Maxide® Concentrate Multi Purpose Fungicide; GardenTech™ Daconil®***  
17 ***Fungicide Ready-to-Use; GardenTech™Daconil Fungicide Concentrate; Lilly/Miller® Disease***  
18 ***Control with Daconil***: Plaintiff alleges in its Notices to Pennington, Excel, Gulfstream, and  
19 Central Garden & Pet Company, Inc., dated December 11, 2006 or June 22, 2007, that the use of  
20 these Covered Products results in exposure to the chemical chlorothalonil when these Covered  
21 Products are used to prevent or for control of diseases on shrubs, trees, fruits, vegetables, and  
22 flowers. Subject to paragraph 2.5 of this Consent Judgment, Central Garden & Pet Company,  
23 Inc., Pennington, Gulfstream, and Excel have agreed not to distribute or sell these Covered  
24 Products in California after the Effective Date (as defined at paragraph 2.5 below) of this Consent  
25 Judgment unless the company includes on the label a Proposition 65 warning in the manner  
26 described at Title 22 of the California Code of Regulations, Article 6, § 12601(b), or the company  
27 reformulates these Covered Products so that they no longer include any of the Covered  
28 Chemicals.

1 (c) *Adams™ Flea & Tick Mist Insecticide, Repellent and Deodorant; Adams™*  
2 *Pyrethrin Dip; Four Paws® Super Fly Repellent™; Zodiac® Triple Action Flea & Tick*  
3 *Shampoo for Dogs, Puppies, Cats, and Kittens; Farnam Endure® Roll-On for Horses; Farnam*  
4 *Equicare® Flysect® Super-C Repellent Concentrate; Flys-Off® Fly Repellent Ointment for*  
5 *Wounds and Sores; Farnam Mosquito Halt™ Repellent Spray for Horses; Repel-X Lotion®*  
6 *Fly Repellent for Horses and Ponies; Farnam Roll-On™ Fly Repellent for Horses, Ponies and*  
7 *Dogs; Farnam Swat® Original Fly Repellent Ointment for Wounds and Sores; Farnam Swat®*  
8 *Clear Formula Fly Repellent Ointment for Wounds and Sores; Prevent™ Mosquito Repellent.*  
9 Plaintiff alleged in its Notices to Central Garden & Pet Company, Inc., and Farnam, and Four  
10 Paws, and Wellmark, dated December 11, 2006 and June 22, 2007, that the use of these Covered  
11 Products result in exposure to the chemical di-n-propyl isocinchomeronate when these Covered  
12 Products are used to protect horses and other domestic animals from certain insects. Subject to  
13 paragraph 2.6 of this Consent Judgment, Central Garden & Pet Company, Inc., and Farnam, and  
14 Four Paws, and Wellmark, as applicable, have agreed to (a) change the precautionary statements  
15 on the label for this Covered Product, and for any other Covered Product that contains this  
16 Covered Chemical that Central, Farnam, Four Paws, and Wellmark may market for use in  
17 California, to include the following statement: "Wash thoroughly with soap and water after  
18 handling, and before eating, drinking, chewing gum, using tobacco, or using the toilet," and (b)  
19 add the following statement to the use instructions: "Wash hands with soap and water promptly  
20 after use," and (c) enhance the use instruction at subparagraph (b) by use of bold print and/or a  
21 pictogram at Central's, Farnam's, Four Paws', and Wellmark's option.

22 (d) *Grant's Kills Ants® Grant's Ant Control:* Plaintiff alleged in its Notice to  
23 Central Garden & Pet Company, Inc. and Grant that the use of this Covered Product results in  
24 exposure to the chemical arsenic when this Covered Product is used to kill ants. Subject to  
25 paragraph 2.5 of this Consent Judgment, Central Garden & Pet Company, Inc. and Grant have  
26 agreed not to distribute or sell this Covered Product in California after the Effective Date (as  
27 defined at paragraph 2.5 below) of this Consent Judgment unless the company includes on the  
28 label a Proposition 65 warning in the manner described at Title 22 of the California Code of



1 Regulations, Article 6, § 12601(b), or the company reformulates this Covered Product so that it  
2 no longer includes any of the Covered Chemicals.

3 2.3 Spectrum (including its subsidiary United) has agreed to the following measures  
4 with respect to the Covered Products described below:

5 (a) ***Spectracide Immunox Plus Insect & Disease Control Spray; Schultz***  
6 ***Fungicide Plus, Disease Plus Insect Control:*** Plaintiff alleged in its Notices issued on  
7 December 11, 2006 and October 2, 1007 to Spectrum that the use of these Covered Products  
8 result in exposure to the chemical myclobutanil when these Covered Products are used in  
9 California to prevent or for control of insects or diseases on shrubs, trees, fruits, vegetables and  
10 flowers. Subject to paragraph 2.6, Spectrum has agreed to (a) change that the precautionary  
11 statements on the label for this Covered Product, and for any other Covered Product that contains  
12 this Covered Chemical that Spectrum may market for use in California, include the following  
13 statement: "Wash thoroughly with soap and water after handling, and before eating, drinking,  
14 chewing gum, using tobacco, or using the toilet," and (b) add the following statement to the use  
15 instructions: "Wash hands with soap and water promptly after use and after contact with treated  
16 plants on day of application," and "Do not allow people or pets to contact treated plants until  
17 spray has dried," and (c) enhance the use instructions at subparagraph (b) by use of bold print  
18 and/or a pictogram at Spectrum's option.

19 2.4 Waterbury has agreed to the following measures with respect to the Covered  
20 Products described below:

21 (a) ***Country Vet Mosquito & Fly Foam for Horses:*** Plaintiff alleged in its Notice  
22 issued on December 11, 2006 to Waterbury, that the use of Country Vet Mosquito & Fly Foam  
23 for Horses results in exposure to the chemical di-n-propyl isocinchomeronate, when this Product  
24 is used to repel mosquitoes, gnats, biting flies, chiggers, ticks, and other flying insects on horses.  
25 Subject to paragraph 2.5 of this Consent Judgment, Waterbury has agreed not to distribute or sell  
26 this Covered Product in California after the Effective Date (as defined at paragraph 2.5 below) of  
27 this Consent Judgment unless the company includes on the label a Proposition 65 warning in the  
28 manner described at Title 22 of the California Code of Regulations, Article 6, § 12601(b), or the

1 company reformulates the Covered Product so that it no longer includes any of the Covered  
2 Chemicals.

3       2.5 In any case where a Defendant has agreed in this Consent Judgment not to  
4 distribute or sell a Covered Product in California (unless the Defendant includes a Proposition 65  
5 warning or reformulates the Covered Product), the Defendant satisfies this requirement by taking  
6 such actions as may be necessary to cease the distribution by the Defendant of that Covered  
7 Product to distributors or retailers in California by the 90<sup>th</sup> day following notice that this Consent  
8 Judgment has been approved and become a final order of the Court ("Effective Date"); provided,  
9 in no event shall Defendants or any distributors or retailers be deemed in violation of this Consent  
10 Judgment or Proposition 65 where Covered Products subject to this Consent Judgment were  
11 distributed or sold by Defendants before the Effective Date (even if stocked in shelves, sold to  
12 consumers, or otherwise within the chain of distribution after the Effective Date).

13       2.6 In any case where a Defendant has agreed in this Consent Judgment to include any  
14 instructions on the label for a Covered Product, the Parties acknowledge that no changes to the  
15 label or labeling for any Covered Products that are the subject of this Consent Judgment can be  
16 made except as permitted by certain federal and California agencies in their implementation of  
17 state and federal laws, other than Proposition 65, that regulate the manufacture, sale, labeling,  
18 distribution and use of these Covered Products, and further that Defendants' obligations to make  
19 changes to the labels for any Covered Products under this Consent Judgment are as follows: (1)  
20 within 60 days following notice that this Consent Judgment has been approved and has become a  
21 final order of the Court, notifying the applicable federal and California agencies of the proposed  
22 change to the use instructions on the label; and (2) within 120 days following the delivery of such  
23 notification to the applicable federal and California agencies, include such changed use  
24 instructions on the first production run of the label of such Covered Product after the notification  
25 of such changed use instructions has been submitted to the applicable federal and California  
26 agencies, provided that no Defendant shall be required to re-label or recall any Covered Products  
27 in the stream of commerce at the time this Consent Judgment is approved and that no Defendant  
28 shall be required to change the use instructions on the label from those approved previously by

1 such federal and California agencies prior to the approval of such change by such agencies, and  
2 further provided that no Defendant is required by federal or California state agencies to generate  
3 testing data or or submit data or reformulate its Covered Product(s) to support its changed use  
4 instructions. Under no circumstances shall this Consent Judgment be interpreted to require any  
5 Defendant to make any other applications or secure any other approvals from federal or state  
6 agencies regarding the labeling (including specifically the use instructions or warnings thereon)  
7 for the Covered Products, on any other aspect of their manufacture, distribution, sale or use or to  
8 distribute any Covered Product in violation of federal and California labeling requirements as  
9 such labeling requirements are interpreted by the applicable federal or California agency.

10  
11 **3. MONETARY PAYMENTS**

12 **3.1** In settlement of this matter, Defendants collectively have agreed to make the  
13 monetary payments totaling \$337,500, as described in paragraphs 3.2 and 3.3 below.

14 **3.2 Payment In Lieu of Civil Penalties:** Within thirty (30) days following notice of  
15 approval and entry of this Consent Judgment by the Court, Defendants shall pay \$77,500 in the  
16 form of a check made payable to Consumer Advocacy Group, Inc. CAG will use the payment for  
17 such projects and purposes related to environmental protection, worker health and safety, or  
18 reduction of human exposure to hazardous substances (including administrative and litigation  
19 costs arising from such projects), as CAG may choose. The check shall be delivered to Reuben  
20 Yeroushalmi, Yeroushalmi & Associates, 3700 Wilshire Boulevard, Suite 480, Los Angeles,  
21 California 90010.

22 **3.3 Reimbursement of Attorneys Fees and Costs:** Within thirty days following  
23 notice of approval and entry of this Consent Judgment, Defendants shall pay \$260,000 in the form  
24 of a check made payable to "Reuben Yeroushalmi, Attorney Client Trust Account" as  
25 reimbursement for the investigation fees and costs, testing costs, expert witness fees, attorneys  
26 fees, and other litigation costs and expenses. The check shall be delivered by overnight delivery  
27 to Reuben Yeroushalmi, Yeroushalmi & Associates, 3700 Wilshire Boulevard, Suite 480, Los  
28 Angeles, California 90010.

1       **4. WAIVER AND RELEASE OF ALL CLAIMS**

2           **4.1 Waiver And Release of Claims Against Defendants:** As to those matters raised  
3 in this Action, the Complaint, or in Plaintiff's Notices (whether as to Covered Products or as to  
4 Covered Chemicals, and without regard to any potential disputes about the adequacy of such  
5 Notices), and any related actions, Plaintiff, on behalf of the general public, hereby releases  
6 Defendants and waives any claims against Defendants for injunctive relief or damages, penalties,  
7 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses  
8 or any other sum incurred or claimed, for any claims under Proposition 65 or any related actions  
9 arising from the sale, distribution or use in California of any Covered Products or Covered  
10 Chemicals, including all claims that may arise from the acts alleged in the Plaintiff's Notices or  
11 the Complaint. In addition, Plaintiff specifically waives and releases defendant Spectrum from  
12 any claims arising from the acts alleged in its Notice to Spectrum dated June 22, 2007, alleging  
13 violations of Proposition 65 arising from the sale and distribution of a product containing the  
14 chemical known as "fluazifop butyl" (CAS No. 6980-60-54). Plaintiff and defendant Spectrum  
15 agree that the product identified in that Notice does not contain fluazifop butyl, but rather  
16 contains fluazifop-p-butyl (CAS No. 79241-46-6), which is not listed under Proposition 65.

17           **4.2 Defendants' Waiver And Release Of Plaintiff:** Defendants hereby release  
18 Plaintiff from and waive any claims against Plaintiff for injunctive relief or damages, penalties,  
19 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,  
20 expenses, or any other sum incurred or claimed or which could have been claimed for matters  
21 related to the Action.

22           **4.3 Matters Covered By This Consent Judgment/Release of Future Claims:** This  
23 Consent Judgment is a full, final, and binding resolution between the Plaintiff, acting on behalf of  
24 itself and on behalf of the general public in the public interest pursuant to *Health and Safety Code*  
25 *Section 25249.7(d)*, and Defendants, as to all claims arising from Defendants' alleged failure to  
26 provide clear, reasonable, and lawful warnings of exposure to the Covered Chemicals.  
27 Compliance with the terms of this Consent Judgment resolves any issue, now and in the future,  
28

1 concerning compliance by Defendants with existing requirements of Proposition 65 to provide  
2 clear and reasonable warning about exposure to the Covered Chemicals.

3       **4.4. Waiver Of Civil Code Section 1542:** This Consent Judgment is intended as a full  
4 settlement and compromise of all claims arising out of or relating to Plaintiffs' Notices and/or the  
5 Action regarding Covered Products, except as set forth herein. No claim is reserved as between  
6 the Parties hereto, and each Party expressly waives any and all rights which it may have under the  
7 provisions of Section 1542 of the *Civil Code* of the State of California, which provides:

8                   A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
9                   WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
10                   EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE  
11                   RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
12                   MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
13                   DEBTOR.

14       **4.5.** For purposes of this paragraph 4., the terms "Plaintiff" and "Defendants" are  
15 defined as follows. The term "Plaintiff" includes the Plaintiff as defined at paragraph 1.1 above,  
16 and also includes its members, subsidiaries, successors, and assigns and its directors, officers,  
17 agents, attorneys, representatives, and employees. The term "Defendants" includes the  
18 Defendants, as that term is defined in paragraph 1.2 above, and also includes their corporate  
19 affiliates, including any and all corporate parents and subsidiaries and their directors, officers,  
20 agents, attorneys, representatives, employees, licensors, heirs, predecessors, successors, and  
21 assigns, their suppliers, distributors and customers of any Covered Products that contain the  
22 Covered Chemicals, and any other customers of such suppliers of the Covered Chemicals,  
23 provided that such customers identify themselves to Plaintiff within sixty days following the  
24 approval of this Agreement, and agree to include on the label(s) for the Covered Products the use  
25 instructions described at paragraph 2.

26       **5.       MODIFICATION OF CONSENT JUDGMENT**

27               This Consent Judgment may be modified from time to time by express written agreement  
28 of the parties, with the approval of the Court, or by an order of this Court in accordance with law.

1           5.1    The Parties recognize in particular that a Defendant or any other person engaged in  
2 the manufacture, distribution or sale of a Covered Product may apply to the Office of Health  
3 Hazard Assessment for a Safe Use Determination ("SUD") indicating that a Proposition 65  
4 warning is not required for any of the Covered Products or a substantially similar product that  
5 contains a Covered Chemical. If such a person should obtain such an SUD, then the Settling  
6 Defendant shall be entitled to submit evidence to CAG demonstrating that the Covered Product,  
7 or for any other substantially similar product used, manufactured and/or sold by Settling  
8 Defendants comes within the scope of the SUD does not require a Proposition 65 warning, or that  
9 different injunctive relief under Proposition 65 is appropriate.

10           5.2    CAG and any Settling Defendant shall have ninety (90) days from the date on  
11 which a Settling Defendant submits such evidence to CAG in which to confer and decide  
12 concerning whether modify the injunctive relief provisions of this Consent Judgment. If the  
13 parties agree that the Covered Products, or for any other additional products used, manufactured  
14 and/or sold by Settling Defendants come within the scope of the SUD, then they shall jointly  
15 move the Court for such modification.

16           5.3    If the parties are unable to agree, then the Settling Defendant may file a motion  
17 with the Court seeking the elimination or modification of the injunctive relief provisions of this  
18 Consent Judgment, based on the SUD.

19           5.4    Subsections 5.1 through 5.3 of this paragraph shall not apply to the monetary relief  
20 sections of this Consent Judgment.

21           5.5    The Attorney General shall be served with notice of any proposed modification to  
22 this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

23           **6.    NECESSITY OF BANKRUPTCY COURT APPROVAL AS TO SPECTRUM**

24           Notwithstanding anything to the contrary set forth herein (including, specifically, the  
25 obligations set forth in Section 3 above), the Plaintiff and the Defendants recognize and hereby  
26 acknowledge that any aspect of this Consent Judgment and the settlement referenced therein that  
27 relate to Spectrum will not become effective until either Spectrum emerges from bankruptcy or  
28

1 the Bankruptcy Court enters an order approving the terms of the settlement as to Spectrum.  
2 Accordingly, upon execution of this Consent Judgment by the parties, unless Spectrum has  
3 already emerged from bankruptcy Spectrum shall seek Bankruptcy Court approval of any aspect  
4 of this Consent Judgment and the settlement referenced therein that relate to Spectrum , provided,  
5 however, that such Bankruptcy Court approval need not be sought if Spectrum, in its sole  
6 discretion, believes that the likely timing of such emergence renders the filing of such motion  
7 unnecessary.

8  
9 **7. ENFORCEMENT OF CONSENT JUDGMENT**

10 7.1 The Parties may, by motion or other application before this Court, and upon notice  
11 having been given to all Parties in accordance with paragraph 10 below, unless waived, enforce  
12 the terms and conditions of this Consent Judgment and seek whatever fines, costs, penalties, or  
13 remedies are provided by law. The prevailing party on any such motion or application shall be  
14 entitled to recover reasonable attorneys' fees and costs.

15 7.2 The Parties may enforce the terms and conditions of this Consent Judgment  
16 pursuant to paragraph 7.1 only after the complaining party has first given thirty (30) days notice  
17 to the Party allegedly failing to comply with the terms and conditions of the Consent Judgment  
18 and has attempted, in an open and good faith manner, to resolve such Party's alleged failure to  
19 comply.

20 **8. GOVERNING LAW**

21 8.1 The terms of this Consent Judgment shall be governed by, and construed in  
22 accordance with, the laws of the State of California.

23 8.2 The Parties have participated jointly in the preparation of this Consent Judgment  
24 and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment  
25 was subject to revision and modification by the Parties and has been accepted and approved as to  
26 its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing  
27 in this Consent Judgment shall not be interpreted against any Party as a result of the manner in  
28 which this Consent Judgment was prepared. Each Party to this Consent Judgment agrees that any

1 statute or rule of construction providing that ambiguities are to be resolved against the drafting  
2 party should not be employed in the interpretation of this Consent Judgment and, in this regard,  
3 the Parties hereby waive the applications of *California Civil Code Section 1654*.

4  
5 **9. ENTIRE AGREEMENT**

6 This Consent Judgment constitutes the sole and entire agreement and understanding  
7 between the Parties with respect to the subject matter hereof, and any prior discussions,  
8 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
9 and therein. There are no warranties, representations, or other agreements between the Parties,  
10 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
11 other than those specifically referred to herein, shall be deemed to exist or bind any of the Parties  
12 hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall  
13 be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the  
14 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the  
15 other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing  
16 waiver.

17 **10. NOTICES**

18 All notices or correspondence to be given pursuant to this Consent Judgment shall be in  
19 writing and shall be personally delivered or sent by first-class, registered, certified mail, overnight  
20 courier, and/or via facsimile transmission (with presentation of facsimile transmission  
21 confirmation) addressed to the Parties as follows:

22 **For Plaintiff:** Yeroushalmi & Associates  
23 Attn: Reuben Yeroushalmi  
24 3700 Wilshire Boulevard, Suite 480  
Los Angeles, California 90010

25 **For Defendants Bayer, Spectrum and Waterbury:**  
26 McKenna Long & Aldridge LLP  
27 Attn: Stanley W. Landfair  
101 California Street, Suite 4100  
28 San Francisco, California 94111



1 For Defendant Central Garden and Affiliates:

2  
3 **Wendel Rosen Black & Dean LLP**  
4 Attn: Daniel Rapaport  
1111 Broadway, 24<sup>th</sup> Floor  
Oakland, California 94067

5 The contacts and/or addresses above may be amended by giving notice to all Parties to this  
6 Consent Judgment.

7 **11. COURT APPROVAL**

8 The Court shall either approve or disapprove of this Consent Judgment in its entirety,  
9 without alteration, deletion or amendment, unless otherwise so stipulated by the Parties and their  
10 counsel. If the Court approves of this Consent Judgment, then the terms of this Consent  
11 Judgment are incorporated into the terms of the Court's Order.

12 Plaintiff will prepare and file a motion to approve this Consent Judgment in full, and shall  
13 take all reasonable measures to ensure that it is entered without delay. In the event that the Court  
14 declines to approve and order entry of the Consent Judgment without any change whatsoever ,  
15 this Consent Judgment shall become null and void upon the election of either Party and upon  
16 written notice to all of the Parties to the Action pursuant to the notice provisions herein (unless  
17 the Parties stipulate otherwise, in writing).

18 If the Court enters this Consent Judgment, Plaintiff shall, within ten (10) working days  
19 thereafter, electronically provide or otherwise serve a copy of it and the report required pursuant  
20 to 11 *Cal. Code Regs.* § 3004 to/on the California Attorney General's Office.

21 **12. AUTHORIZATION**

22 The undersigned are authorized to execute this Consent Judgment on behalf of their  
23 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
24 Consent Judgment.

25  
26 **13. COUNTERPARTS/FACSIMILE SIGNING**

27 This Consent Judgment may be executed in one or more counterparts, each of which shall  
28 be deemed an original, and all of which, when taken together, shall constitute one and the same

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document. All signatures need not appear on the same page of the document and signatures of the Parties transmitted by facsimile shall be deemed binding.

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

**CONSUMER ADVOCACY GROUP, INC.**

*Lyn H Marcus*  
(Signature)

Lyn H Marcus  
(Name)

President  
(Title)

Dated: August 6, 2009

**BAYER CORPORATION**

*GARY D. MCCORMACK*  
(Signature)

GARY D. MCCORMACK  
(Name)

Vice President and Associate General Counsel  
(Title)

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Dated: 07/31/09

<sup>KR</sup>  
BAYER CROPSCIENCE LP

Jacqueline M. Applegate  
(Signature)

Jacqueline M. Applegate  
(Name)

VP of Consumer Products NA  
(Title)  
Head of Bayer Advanced

Dated: \_\_\_\_\_

CENTRAL GARDEN & PET COMPANY, INC.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Dated: \_\_\_\_\_

FARNAM COMPANIES, INC.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

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Dated: \_\_\_\_\_

**BAYER CROPSCIENCE LP**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Dated: JULY 20, 2009

**CENTRAL GARDEN & PET COMPANY, INC.**

Stuart W. Booth  
(Signature)

STUART W. BOOTH  
(Name)

EVP, CFO & SECRETARY  
(Title)

Dated: JULY 20, 2009

**FARNAM COMPANIES, INC.**

Stuart W. Booth  
(Signature)

STUART W. BOOTH  
(Name)

V.P.-FINANCE, SECRETARY  
& TREASURER  
(Title)

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Dated: JULY 20, 2009

FOUR PAWS PRODUCTS, LTD.

Stuart Booth  
(Signature)

STUART W. BOOTH  
(Name)

V.P., CFO & SECRETARY  
(Title)

Dated: JULY 20, 2009

GRANT LABORATORIES, INC.

Stuart Booth  
(Signature)

STUART W. BOOTH  
(Name)

V.P., CFO & SECRETARY  
(Title)

Dated: JULY 20, 2009

PENNINGTON SEED, INC.

Stuart W. Booth  
(Signature)

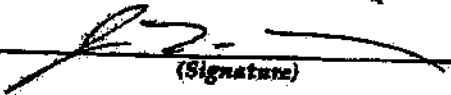
STUART W. BOOTH  
(Name)

EVP, CFO, TREASURER &  
SECRETARY  
(Title)

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Dated: \_\_\_\_\_

SPECTRUM BRANDS, INC.

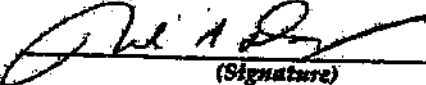
  
(Signature)

John T. Wilson  
(Name)

Vice President, Secretary,  
(Title) Gen-Counsel

Dated: \_\_\_\_\_

UNITED INDUSTRIES CORPORATION

  
(Signature)

Michael G. Pfefferkorn  
(Name)

Divisional General Counsel & Secretary  
(Title)

Dated: \_\_\_\_\_

WATERBURY COMPANIES, INC.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

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Dated: \_\_\_\_\_

**SPECTRUM BRANDS, INC.**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(Title)*

Dated: \_\_\_\_\_

**UNITED INDUSTRIES CORPORATION**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(Title)*

Dated: July 28, 2009

**WATERBURY COMPANIES, INC.**

T. K. Kosteki

\_\_\_\_\_  
*(Signature)*

TED KOSTECKI

\_\_\_\_\_  
*(Name)*

VP - CFO

\_\_\_\_\_  
*(Title)*

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Dated: JULY 20, 2009

EXCEL MARKETING

Stuart W. Booth  
(Signature)

STUART W. BOOTH  
(Name)

EVP, CFO & SECRETARY  
(Title)

Dated: JULY 20, 2009

GULFSTREAM HOME & GARDEN, INC.

Stuart W. Booth  
(Signature)

STUART W. BOOTH  
(Name)

TREASURER, CFO &  
SECRETARY  
(Title)

Dated: JULY 20, 2009

WELLMARK INTERNATIONAL, INC.

Stuart W. Booth  
(Signature)

STUART W. BOOTH  
(Name)


V.P.-FINANCE & SECRETARY  
(Title)

APPROVED AS TO FORM:



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Dated: July 15/09

  
**REUBEN YEROUSHALMI**  
**COUNSEL FOR PLAINTIFF CONSUMER**  
**ADVOCACY GROUP, INC.**

Dated: \_\_\_\_\_

**STANLEY W. LANDEAIR**  
**COUNSEL FOR DEFENDANTS BAYER**  
**CORPORATION, BAYER CROPSCIENCE LP,**  
**SPECTRUM BRANDS, INC., UNITED**  
**INDUSTRIES CORPORATION, AND WATERBURY**  
**COMPANIES, INC.**

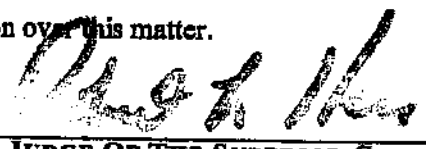
Dated: \_\_\_\_\_

**DANIEL RAPAPORT**  
**COUNSEL FOR DEFENDANTS CENTRAL**  
**GARDEN AND PET COMPANY, INC., EXCEL**  
**MARKETING, FARNAM COMPANIES, INC.,**  
**FOUR PAWS PRODUCTS, LTD., GRANT**  
**LABORATORIES, INC., GULFSTREAM HOME &**  
**GARDEN, INC., PENNINGTON SEED, INC., AND**  
**WELLMARK INTERNATIONAL**

**IT IS SO ORDERED:**

In accordance with the stipulation of Plaintiff and Defendants, the Court hereby incorporates the terms of the Consent Judgment into this Order. If a party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: 10-8-09

  
**JUDGE OF THE SUPERIOR COURT**

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Dated: July 15/09

  
**REUBEN YEROUSHALMI**  
COUNSEL FOR PLAINTIFF CONSUMER  
ADVOCACY GROUP, INC.

Dated: \_\_\_\_\_

**STANLEY W. LANDEAIR**  
COUNSEL FOR DEFENDANTS BAYER  
CORPORATION, BAYER CROPSCIENCE LP,  
SPECTRUM BRANDS, INC., UNITED  
INDUSTRIES CORPORATION, AND WATERBURY  
COMPANIES, INC.

Dated: \_\_\_\_\_

  
**DANIEL KAPADORT**  
COUNSEL FOR DEFENDANTS CENTRAL  
GARDEN AND PET COMPANY, INC., EXCEL  
MARKETING, FARNAM COMPANIES, INC.,  
FOUR PAWS PRODUCTS, LTD., GRANT  
LABORATORIES, INC., GULFSTREAM HOME &  
GARDEN, INC., PENNINGTON SEED, INC., AND  
WELLMARK INTERNATIONAL

**IT IS SO ORDERED:**

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Dated: \_\_\_\_\_

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**JUDGE OF THE SUPERIOR COURT**

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Dated: \_\_\_\_\_

**REUBEN YEROUSHALMI**  
COUNSEL FOR PLAINTIFF CONSUMER  
ADVOCACY GROUP, INC.

Dated: Aug. 16, 2004

*Stanley W. Landfair*  
**STANLEY W. LANDFAIR**

COUNSEL FOR DEFENDANTS BAYER  
CORPORATION, BAYER CROPSOURCE LP,  
SPECTRUM BRANDS, INC., UNITED  
INDUSTRIES CORPORATION, AND WATERBURY  
COMPANIES, INC.

Dated: \_\_\_\_\_

**DANIEL RAPAPORT**  
COUNSEL FOR DEFENDANTS CENTRAL  
GARDEN AND PET COMPANY, INC., EXCEL  
MARKETING, FARNAM COMPANIES, INC.,  
FOUR PAWS PRODUCTS, LTD., GRANT  
LABORATORIES, INC., GULFSTREAM HOME &  
GARDEN, INC., PENNINGTON SEED, INC., AND  
WELLMARK INTERNATIONAL

**IT IS SO ORDERED:**

In accordance with the stipulation of Plaintiff and Defendants, the Court hereby incorporates the terms of the Consent Judgment into this Order. If a party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**JUDGE OF THE SUPERIOR COURT**

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