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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.

**ENDORSED FILED  
SUPERIOR COURT  
COUNTY OF SAN FRANCISCO**  
  
**DEC 21 2010**  
  
**CLERK OF THE COURT**  
BY: Marsha Smith  
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**CONSUMER ADVOCACY GROUP, INC.,**  
  
Plaintiff,  
  
v.  
  
**SAWYER PRODUCTS, INC.,**  
  
Defendants.

CASE No. CGC-09-494169  
**[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 Defendant:** The Defendant is Sawyer Products, Inc., ("Sawyer").

**1.3 The Parties:** Plaintiff and Defendant are sometimes referred to herein in the singular as a "Party" and collectively as the "Parties."

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

12           **1.5 The Complaint:** On April 9, 2010, Plaintiff filed a complaint against Defendant  
13 in the Superior Court for the City and County of San Francisco (“Complaint”) alleging that  
14 Defendant violated Proposition 65 by exposing individuals in California to the chemical known as  
15 di-*n*-propyl isocinchomeronate (the “Covered Chemical”),, which has been designated under the  
16 Act as “known to the State of California to cause cancer” within the meaning of Section  
17 25249.8(b), without providing Proposition 65 warnings to such individuals as alleged to be  
18 required under Section 25249.6. According to the Complaint, the alleged exposure to the  
19 Covered Chemical occurs when individuals in California use or apply certain insect repellent  
20 products that are manufactured, packaged, distributed, marketed and/or sold by Defendant for use  
21 in California. These products are identified with specificity in Plaintiff’s Notices and the  
22 Complaint, and such products, as identified in Plaintiff’s Notices, are referred to collectively  
23 herein as the “Covered Products.”

24           **1.6 Jurisdiction:** Solely for purposes of this Consent Judgment, the Parties stipulate  
25 that the Court has personal jurisdiction over Defendant as to the acts alleged in the Action; that  
26 venue is proper in the City and County of San Francisco; that the claims in the Action present a  
27 live controversy as to the application of Proposition 65 to the Covered Products and the Covered  
28 Chemical therein; that this Court has jurisdiction to enter this Consent Judgment as a resolution of

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1 all claims alleged in the Action; and that the Court shall retain jurisdiction to implement the  
2 Consent Judgment.

3       **1.7 The Standard for Determining Whether Proposition 65 Warnings Are**  
4 **Required:** Section 25249.6 of Proposition 65 provides that “[n]o person in the course of  
5 business shall knowingly and intentionally expose any individual to a chemical known to the state  
6 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
7 individual, except as provided in Section 25429.10.” Section 25249.10(c), under the heading  
8 “Exemptions from Warning Requirement,” provides that Section 25249.6 “shall not apply” to an  
9 “exposure for which the person responsible can show that the exposure poses no significant risk  
10 assuming lifetime exposure at the level in question for substances known to the state to cause  
11 cancer, and that the exposure will have no observable effect assuming exposure at one thousand  
12 (1000) times the level in question for substances known to the state to cause reproductive toxicity,  
13 based on evidence and standards of comparable scientific validity to the evidence and standards  
14 which form the scientific basis for the listing of such chemical . . . . In any action brought to  
15 enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this  
16 subdivision shall be on the defendant.” Proposition 65 thus makes it unlawful for a person  
17 subject to the Act to expose an individual in California to a Proposition 65-listed chemical  
18 without first providing a Proposition 65 warning unless an exemption to this requirement applies.  
19 Where the defendant asserts an exemption because the alleged exposure is beneath the level that  
20 would require a warning, the burden of proof is on the defendant to establish that the exemption  
21 applies.

22       **1.8 Settlement:** The first of Plaintiff’s Notices to Sawyer was issued in July 3, 2008;  
23 the second was issued in July 1, 2009. The Parties began engaging in informal discovery shortly  
24 thereafter, and have been engaged in settlement negotiations since that time. As a result of this  
25 exchange of information, the Parties agree on some aspects of the allegations, but disagree as to  
26 several other aspects, and thus disagree as to whether Defendant has violated Proposition 65.  
27 Specifically, the Parties agree that each of the Covered Products contains the Covered Chemical,  
28 and that Defendant has not distributed Proposition 65 warnings with respect to the Covered

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1 Products. Defendant disputes, however, that the manufacture, packaging, distribution, marketing,  
2 sale or use of the Covered Products results in the exposure of individuals in California (or  
3 elsewhere) to the Covered Chemical in amounts, if any, that would require a warning under  
4 Proposition 65. Defendant also asserts other affirmative defenses. In support of its assertions,  
5 Defendant, through its counsel, has presented scientific evidence to demonstrate that any  
6 exposure to the Covered Chemical that results from any reasonably anticipated use of the  
7 Covered Products, in the words of Section 25249.10(c), "poses no significant risk assuming  
8 lifetime exposure at the level in question for substances known to the state to cause cancer ...  
9 based on evidence and standards of comparable scientific validity to the evidence and standards  
10 which form the scientific basis for the listing of such chemical . . . ." Plaintiff disputes  
11 Defendant's assertions. In support of its position, Plaintiff has presented evidence to dispute  
12 Defendant's evidence with respect to the use of the Covered Chemical in products similar to the  
13 Covered Products, and asserts that this evidence also demonstrates that Defendant's evidence  
14 with respect to the Covered Chemical and Covered Products does not satisfy Defendant's burden  
15 under Section 25249.6. Therefore, in order to avoid prolonged litigation and the waste of private  
16 and judicial resources that would arise from prosecuting, defending, and adjudicating the issues  
17 on which the Plaintiff and Defendant disagree, the Parties have agreed, subject to the approval of  
18 the Court, to compromise their disputed claims and defenses, and have entered into a settlement  
19 agreement, the terms of which are embodied in this Consent Judgment.

20 **1.9 No Admissions:** Neither the Consent Judgment nor any of its provisions shall be  
21 construed as an admission by any Party of any fact, finding, issue of law, or violation of law,  
22 including Proposition 65 or any other statute, regulation, or common law requirement related to  
23 exposure to the Covered Chemical or other chemicals listed under Proposition 65 from the  
24 Covered Products. By executing this Consent Judgment, and agreeing to provide the relief and  
25 remedies specified herein, Defendant does not admit that this Action is not pre-empted by Federal  
26 law, or that Defendant has committed any violations of Proposition 65, or any other law or legal  
27 duty, and, further, specifically deny that they have committed any such violations. Rather,  
28 Defendant maintains that all Covered Products distributed, marketed and/or sold by Defendant in

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1 California have at all times been in compliance with Proposition 65. Nothing in this Consent  
2 Judgment shall prejudice, waive, or impair any right, remedy, or defense that Plaintiff and  
3 Defendant may have in any other or in future legal proceedings unrelated to these proceedings.  
4 Defendant reserves all of its rights and defenses with regard to any claim by any person under  
5 Proposition 65 or otherwise. Nevertheless, this paragraph shall not diminish or otherwise affect  
6 the obligations, responsibilities, waivers, releases, and/or duties provided for under this Consent  
7 Judgment.

8  
9 **2. INJUNCTIVE RELIEF**

10 In the spirit of settlement and compromise, Sawyer has agreed to (a) change the precautionary  
11 statements on the label for this product to include the following statement: "*Wash thoroughly*  
12 *with soap and water after handling, and before eating, drinking, chewing gum, using tobacco,*  
13 *or using the toilet,*" and (b) add the following statement to the use instructions: "*Wash hands*  
14 *with soap and water promptly after use,*" and (c) enhance the use instruction at subparagraph (b)  
15 by use of bold print and/or a pictogram, at Defendant's option. The Parties acknowledge that no  
16 changes to the label or labeling for any Covered Products that are the subject of this Consent  
17 Judgment can be made except as permitted by certain federal and California agencies in their  
18 implementation of state and federal laws, other than Proposition 65, that regulate the  
19 manufacture, sale, labeling, distribution and use of these Covered Products, and further that  
20 Defendant's obligations to make changes to the labels for any Covered Products under this  
21 Consent Judgment are as follows: (1) within 60 days following notice that this Consent Judgment  
22 has been approved and has become a final order of the Court, notifying the applicable federal and  
23 California agencies of the proposed change to the use instructions on the label; and (2) within 120  
24 days following the delivery of such notification to the applicable federal and California agencies,  
25 include such changed use instructions on the first production run of the label of such Covered  
26 Product after the notification of such changed use instructions has been submitted to the  
27 applicable federal and California agencies, provided that Defendant shall not be required to re-  
28 label or recall any Covered Product in the stream of commerce at the time this Consent Judgment

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1 is approved and that Defendant shall not be required to change the use instructions on the label  
2 from those approved previously by such federal and California agencies prior to the approval of  
3 such change by such agencies, and further provided that Defendant is not required by federal or  
4 California state agencies to generate testing data or submit data or reformulate its Covered  
5 Product(s) to support its changed use instructions. Under no circumstances shall this Consent  
6 Judgment be interpreted to require Defendant to make any other applications or secure any other  
7 approvals from federal or state agencies regarding the labeling (including specifically the use  
8 instructions or warnings thereon) for the Covered Product(s), on any other aspect of its (their)  
9 manufacture, distribution, sale or use or to distribute any Covered Product in violation of federal  
10 and California labeling requirements as such labeling requirements are interpreted by the  
11 applicable federal or California agency.

12  
13 **3. MONETARY PAYMENTS**

14 **3.1 Total of Payments:** In settlement of this matter, Defendant has agreed to make  
15 monetary payments totaling \$25,000 (Twenty-Five Thousand Dollars), as described in paragraphs  
16 3.2 and 3.3 below.

17 **3.2 Payment In Lieu of Civil Penalties:** Within thirty (30) days following notice of  
18 approval and entry of this Consent Judgment by the Court, Defendant shall pay \$5000 in the form  
19 of a check made payable to "Consumer Advocacy Group, Inc." CAG will use the payment for  
20 such projects and purposes related to environmental protection, worker health and safety, or  
21 reduction of human exposure to hazardous substances (including administrative and litigation  
22 costs arising from such projects), as CAG may choose. The check shall be delivered to: Reuben  
23 Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills,  
24 California 90212.

25 **3.3 Reimbursement of Attorneys Fees and Costs:** Within thirty (30) days following  
26 notice of approval and entry of this Consent Judgment, Defendant shall pay \$20,000 in the form  
27 of a check made payable to "YEROUSHALMI & ASSOCIATES" as reimbursement for the  
28 investigation fees and costs, testing costs, expert witness fees, attorneys fees, and other litigation

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1 costs and expenses. The check shall be delivered by overnight delivery to: Reuben Yeroushalmi,  
2 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California  
3 90212.

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

6 **4.1 Waiver And Release of Claims Against Defendant:** As to those matters raised  
7 in this Action, the Complaint, or in Plaintiff's Notices (whether as to Covered Products or as to  
8 Covered Chemical, and without regard to any potential disputes about the adequacy of such  
9 Notices), and any related actions, Plaintiff, on behalf of the general public, hereby releases  
10 Defendant and waives any claims against Defendant for injunctive relief or damages, penalties,  
11 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses  
12 or any other sum incurred or claimed, for any claims under Proposition 65 or any related actions  
13 arising from the sale, distribution or use in California of any Covered Products or Covered  
14 Chemical, including all claims that may arise from the acts alleged in the Plaintiff's Notices or the  
15 Complaint.

16 **4.2 Defendant's Waiver And Release Of Plaintiff:** Defendant hereby releases  
17 Plaintiff from and waive any claims against Plaintiff for injunctive relief or damages, penalties,  
18 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,  
19 expenses, or any other sum incurred or claimed or which could have been claimed for matters  
20 related to the Action.

21 **4.3 Matters Covered By This Consent Judgment/Release of Future Claims:** This  
22 Consent Judgment is a full, final, and binding resolution between the Plaintiff, acting on behalf of  
23 itself and on behalf of the general public in the public interest pursuant to *Health and Safety Code*  
24 Section 25249.7(d), and Defendant, as to all claims arising from Defendant's alleged failure to  
25 provide clear, reasonable, and lawful warnings of exposure to the Covered Chemical.  
26 Compliance with the terms of this Consent Judgment resolves any issue, now and in the future,  
27 concerning compliance by Defendant with existing requirements of Proposition 65 to provide  
28 clear and reasonable warnings about exposure to the Covered Products only.

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1           **4.4. Waiver Of Civil Code Section 1542:** This Consent Judgment is intended as a full  
2 settlement and compromise of all claims arising out of or relating to Plaintiffs' Notices and/or the  
3 Action regarding the Covered Products, except as set forth herein. No claim is reserved as  
4 between the Parties hereto, and each Party expressly waives any and all rights which it may have  
5 under the provisions of Section 1542 of the *Civil Code* of the State of California, which provides:

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

12           **4.5.** For purposes of this paragraph 4., the terms “Plaintiff” and “Defendant” are  
13 defined as follows. The term “Plaintiff” includes the Plaintiff as defined at paragraph 1.1 above,  
14 and also includes its members, subsidiaries, successors, and assigns and its directors, officers,  
15 agents, attorneys, representatives, and employees. The term “Defendant” includes the Defendant,  
16 as that term is defined in paragraph 1.2 above, and also includes its corporate affiliates, including  
17 any and all corporate parents and subsidiaries and their directors, officers, agents, attorneys,  
18 representatives, employees, licensors, heirs, predecessors, successors, and assigns, their suppliers,  
19 distributors and customers of any Covered Products that contain the Covered Chemical, and any  
20 other customers of such suppliers of the Covered Chemical, provided that such customers identify  
21 themselves to Plaintiff within sixty (60) days following the approval of this Agreement, and agree  
22 to include on the label(s) for the Covered Products the use instructions described at paragraph 2.

23           **5.       MODIFICATION OF CONSENT JUDGMENT**

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

26           **5.1**     The Parties recognize in particular that a Defendant or any other person engaged in  
27 the manufacture, distribution or sale of a Covered Product may apply to the Office of Health  
28 Hazard Assessment for a Safe Use Determination (“SUD”) indicating that a Proposition 65  
warning is not required for any of the Covered Products or a substantially similar product that



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1 contains a Covered Chemical. If such a person should obtain such an SUD, then the Defendant  
2 shall be entitled to submit evidence to CAG demonstrating that the Covered Product, or for any  
3 other substantially similar product used, manufactured and/or sold by Defendant comes within the  
4 scope of the SUD does not require a Proposition 65 warning, or that different injunctive relief  
5 under Proposition 65 is appropriate.

6 5.2 CAG and the Defendant shall have ninety (90) days from the date on which the  
7 Defendant submits such evidence to CAG in which to confer and decide concerning whether  
8 modify the injunctive relief provisions of this Consent Judgment. If the Parties agree that the  
9 Covered Products, or for any other additional products used, manufactured and/or sold by the  
10 Defendant come within the scope of the SUD, then they shall jointly move the Court for such  
11 modification.

12 5.3 If the Parties are unable to agree, then the Defendant may file a motion with the  
13 Court seeking the elimination or modification of the injunctive relief provisions of this Consent  
14 Judgment, based on the SUD.

15 5.4 Subsections 5.1 through 5.3 of this paragraph shall not apply to the monetary relief  
16 sections of this Consent Judgment.

17 5.5 The Attorney General shall be served with notice of any proposed modification to  
18 this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

19  
20 **6. ENFORCEMENT OF CONSENT JUDGMENT**

21 6.1 The Parties may, by motion or other application before this Court, and upon notice  
22 having been given to all Parties in accordance with paragraph 10 below, unless waived, enforce  
23 the terms and conditions of this Consent Judgment and seek whatever fines, costs, penalties, or  
24 remedies are provided by law. The prevailing party on any such motion or application shall be  
25 entitled to recover reasonable attorneys' fees and costs.

26 6.2 The Parties may enforce the terms and conditions of this Consent Judgment  
27 pursuant to paragraph 6.1 only after the complaining party has first given thirty (30) days notice  
28 to the Party allegedly failing to comply with the terms and conditions of the Consent Judgment

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1 and has attempted, in an open and good faith manner, to resolve such Party's alleged failure to  
2 comply.

3  
4 **7. GOVERNING LAW**

5 7.1 The terms of this Consent Judgment shall be governed by, and construed in  
6 accordance with, the laws of the State of California.

7 7.2 The Parties have participated jointly in the preparation of this Consent Judgment  
8 and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment  
9 was subject to revision and modification by the Parties and has been accepted and approved as to  
10 its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing  
11 in this Consent Judgment shall not be interpreted against any Party as a result of the manner in  
12 which this Consent Judgment was prepared. Each Party to this Consent Judgment agrees that any  
13 statute or rule of construction providing that ambiguities are to be resolved against the drafting  
14 party should not be employed in the interpretation of this Consent Judgment and, in this regard,  
15 the Parties hereby waive the applications of California *Civil Code* Section 1654.

16  
17 **8. ENTIRE AGREEMENT**

18 This Consent Judgment constitutes the sole and entire agreement and understanding  
19 between the Parties with respect to the subject matter hereof, and any prior discussions,  
20 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
21 and therein. There are no warranties, representations, or other agreements between the Parties,  
22 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
23 other than those specifically referred to herein, shall be deemed to exist or bind any of the Parties  
24 hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall  
25 be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the  
26 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the  
27 other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing  
28 waiver.

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1    **9.    NOTICES**

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

6   **For Plaintiff:**                   **Yeroushalmi & Associates**  
7    Attn: Reuben Yeroushalmi  
8    9100 Wilshire Boulevard, Suite 610E  
  Beverly Hills, California 90212

9   **For Defendant:**               **McKenna Long & Aldridge LLP**  
10   Attn: Stanley W. Landfair  
11   101 California Street, 41<sup>st</sup> Floor  
  San Francisco, California 94111

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

14  
15   **10.   COURT APPROVAL**

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

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

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

1 11. AUTHORIZATION

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

5  
6 12. COUNTERPARTS/FACSIMILE SIGNING

7 This Consent Judgment may be executed in one or more counterparts, each of which shall  
8 be deemed an original, and all of which, when taken together, shall constitute one and the same  
9 document. All signatures need not appear on the same page of the document and signatures of  
10 the Parties transmitted by facsimile shall be deemed binding.

11 IT IS SO STIPULATED:

12  
13 Dated: 8/3/10

CONSUMER ADVOCACY GROUP, INC.

14 *Lyn H. Marcus*  
15 (Signature)

16 Lyn H. Marcus  
17 (Name)

18 President  
19 (Title)

20  
21 Dated: July 28, 2010

SAWYER PRODUCTS, INC.

22 *Kurt Avery*  
23 (Signature)

24 KURT AVERY  
25 (Name)

26 PRESIDENT  
27 (Title)

28

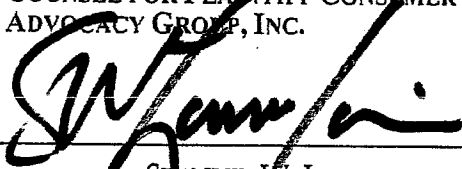
1 APPROVED AS TO FORM:

2  
3 Dated: 8/3/10



REUBEN YEROUSHALMI  
COUNSEL FOR PLAINTIFF CONSUMER  
ADVOCACY GROUP, INC.

4  
5  
6 Dated: July 30, 2010



STANLEY W. LANDFAIR  
COUNSEL FOR DEFENDANT SAWYER  
PRODUCTS, INC.

7  
8  
9 IT IS SO ORDERED: ~~ORDERED~~ **ADJUDGED**

10  
11  
12 In accordance with the stipulation of Plaintiff and Defendants, the Court hereby  
13 ~~incorporates the terms~~ <sup>approves</sup> of the Consent Judgment ~~into this Order~~. If a party violates the provisions  
14 of this Consent Judgment, this Court retains jurisdiction over this matter.

15  
16 Dated: DEC 21 2010

PETER J. BUSCH  
JUDGE OF THE SUPERIOR COURT  
PETER J. BUSCH

17  
18 SF:27421803.1

**EXHIBIT A**

---

**EXHIBIT A**

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986  
(Health & Saf. Code, §§ 25249.5 et seq.) ("Proposition 65")

7/03/2008

Sawyer Products, Inc.  
Kurt Avery  
605 7th Avenue North  
Safety Harbor FL 34695

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning (i) Sawyer™ Repellent Gold Composite Insect  
Repellent Spray, and (ii) Sawyer® Premium Insect Repellent Broad Spectrum.

Dear Mr. Avery:

**Consumer Advocacy Group, Inc.** ("CAG"), the noticing entity, serves this Notice of Violation ("Notice") upon Sawyer Products, Inc. ("Violator") pursuant to and in compliance with Proposition 65. Violator may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi, Esq., 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010, telephone no. 213-382-3183, facsimile no. 213-382-3430. This Notice satisfies a prerequisite for CAG to commence an action against Violator in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is a registered corporation based in California. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65. CAG is a nonprofit entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices.
- This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." (Health & Saf. Code, § 25249.6.)
- (i) Sawyer™ Repellent Gold Composite Insect Repellent Spray, and (ii) Sawyer® Premium Insect Repellent Broad Spectrum contain Di-*n*-propyl isocinchomeronate (MGK Repellent 326). On May 1, 1996, the Governor of California added Di-*n*-propyl isocinchomeronate (MGK Repellent 326) to the list of chemicals known to the State to cause cancer, which was more than twenty months before CAG served this Notice.
- This Notice addresses consumer products exposure. "A 'consumer products exposure' is an exposure which results from a person's acquisition, purchase, storage, consumption, or other reasonably



foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.”  
(Cal. Code Regs. tit. 22, § 12601(b).)

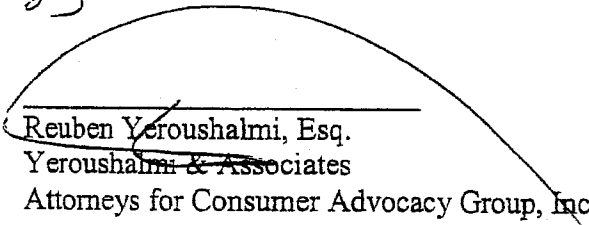
Violator caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers (i) Sawyer™ Repellent Gold Composite Insect Repellent Spray, and (ii) Sawyer® Premium Insect Repellent Broad Spectrum (“Sawyer Repellent”), the packaging for which (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-complaint warning. Nor did Violator, pertinent to Sawyer Repellent, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, pertinent to Sawyer Repellent, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof. Sawyer™ Repellent Gold Composite Insect Repellent Spray is for use to repel mosquitoes, chigger, ticks, deer flies, stable flies, black flies, gnats and fleas on exposed skin surfaces on humans. Sawyer® Premium Insect Repellent Broad Spectrum is for use to repel various insects on exposed skin surfaces on humans.

These violations occurred each day between July 3, 2005, and July 3, 2008, and continuing thereafter.

The principal route of exposure was dermal contact caused when users of product apply Sawyer Repellent to skin or clothing. Thereby users and other persons in proximity permit bare skin to touch the solution containing the chemical relevant to this notice. A route of exposure by inhalation also occurs when users and other persons in proximity inadvertently inhale the product spray, fumes, or mist.

Proposition 65 requires that notice and intent to sue be given to the violator(s) 60 days before the suit is filed. With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within 60 calendar days of the sending of this notice (plus ten calendar days because the place of address is outside the State of California but within United States), CAG may file suit.

Dated: July 3/08

  
Reuben Yeroushalmi, Esq.  
Yeroushalmi & Associates  
Attorneys for Consumer Advocacy Group, Inc.

## Appendix A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

#### WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those chemicals must comply with the following:

**Clear and Reasonable Warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical

involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees.. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

## FOR FURTHER INFORMATION...

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharge that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the list chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

## HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

Contact the Office of Environmental Health Hazard Assessment's  
Proposition 65 Implementation Office at (916) 445-6900.

### **§14000. Chemicals Required by State or Federal Law to Have been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.**

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required [Health and Safety Code 25249.8(c)].

Readers should note a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation. The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients.

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010.

I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid on the date shown below. Place of Mailing: Los Angeles, CA

**Name and address of each violator to whom documents were mailed:**

Sawyer Products, Inc.  
Kurt Avery  
605 7th Avenue North  
Safety Harbor FL 34695

**Name and address of each public prosecutor to whom documents were mailed:**

See Distribution List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: July

By: \_\_\_\_\_  
Moosa Saidian

**Distribution List**

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201-0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 11562 "B" Ave Auburn, CA 95603-2687
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 2222 "M" St. Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 4075 Main St Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 <sup>th</sup> Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533

Imperial County District Attorney 939 W. Main St., 2 <sup>nd</sup> Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110

(i) Sawyer™ Repellent Gold Composite Insect Repellent Spray, and (ii) Sawyer® Premium Insect Repellent Broad Spectrum

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with ~~and relied on by~~ the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated:

By:   
REUBEN YERUSHALMI

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT OF 1986  
(*Cal. Health & Safety Code* § 25249.5, *et seq.*) ("Proposition 65")

July 1, 2009

President, CEO,  
Agent for Process, and/or  
Kurt Avery  
Sawyer Products, Inc.  
605 7th Avenue North  
Safety Harbor FL 34695

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE  
ATTACHED CERTIFICATE OF SERVICE

Re: Violation of Proposition 65 concerning **Sawyer® Premium Insect Repellent Broad  
Spectrum**

Dear Mr. Avery or To Whom It May Concern:

**Consumer Advocacy Group, Inc.** ("CAG"), the noticing entity, serves this Notice of Violation ("Notice") Sawyer Products, Inc. ("Violator") pursuant to and in compliance with Proposition 65. Violator may contact CAG concerning this Notice through its designated person within the entity, its attorney, Daniel D. Cho, Esq., 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010, telephone no. (213) 382-3183, facsimile no. (213) 382-3430. This Notice satisfies a prerequisite for CAG to commence an action against Violator in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is a registered corporation based in California. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65. CAG is a nonprofit entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices.
- This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." *Cal. Health & Safety Code* § 25249.6.
- **Sawyer® Premium Insect Repellent Broad Spectrum** contains Di-*n*-propyl isocinchomeronate (MGK Repellent 326). On May 1, 1996, the Governor of California added Di-*n*-propyl isocinchomeronate (MGK Repellent 326) to the list of chemicals known to the State to cause cancer, which was more than twenty months before CAG served this Notice.



- This Notice addresses consumer products exposures. A “[c]onsumer products exposure” is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. 27 § 25602(b)*.

Violator caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers Sawyer® Premium Insect Repellent Broad Spectrum (“Sawyer Repellent”), the packaging for which (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-complaint warning. Nor did Violator, pertinent to Sawyer Repellent, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violator, pertinent to Sawyer Repellent, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof. Sawyer® Premium Insect Repellent Broad Spectrum is for use to repel various insects on exposed skin surfaces on humans.

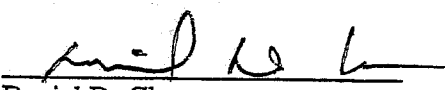
These violations occurred each day between July 1, 2006, and July 1, 2009, and are ever continuing thereafter.

The principal routes of exposure were through dermal contact, hand to mouth or mucus membrane transfer absorption, and ingestion when users of product apply Sawyer Repellent to skin or clothing. Thereby users and other persons in proximity permit bare skin to touch the solution containing the chemical relevant to this notice. A route of exposure by inhalation and ingestion also occurs when users and other persons in proximity inadvertently inhale or ingest the product spray, fumes, or mist.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code § 252549.7(d)(1)*. With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. See *Cal. Health & Safety Code § 25249.7(d)(1)*; *Cal. Code Regs. 27 § 25903(d)(1)*; and *Cal. Code Civ. Proc. § 1013*. CAG remains open to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violator, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: July 1, 2009

  
Daniel D. Cho  
Yeroushalmi & Associates  
Attorneys for Consumer Advocacy Group, Inc.

## Appendix A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, Sections 25000 through 27000.

#### WHAT DOES PROPOSITION 65 REQUIRE?

*The "Governor's List."* Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemicals have been listed as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those chemicals must comply with the following:

*Clear and Reasonable Warnings.* A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is

exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

*Prohibition from discharges into drinking water.* A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

*Governmental agencies and public water utilities.* All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

*Businesses with nine or fewer employees.* Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

*Exposures that pose no significant risk of cancer.* For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

*Exposures that will produce no observable reproductive effect at 1,000 times the level in question.* For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000

times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

*Discharge that do not result in a "significant amount" of the listed chemical entering into any source of drinking water.* The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the list chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

#### HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 27, California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

#### FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

#### §27000.

#### Chemicals Required by State or Federal Law to Have been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required [Health and Safety Code 25249.8(c)].

Readers should note a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation. The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the United States Environmental Protection Agency (U.S. EPA). The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 950 requires specific, additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 950 data gaps for oncogenicity, reproduction, and teratology studies for the non-200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

[Final Paragraph and List Omitted].

**Sawyer® Premium Insect Repellent Broad Spectrum**

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Daniel D. Cho, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 1, 2009

By:   
DANIEL D. CHO

**Distribution List**

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Los Angeles, CA

**Name and address of each party to whom documents were mailed:**

Robert H. Rudman, President, or  
Current President/CEO  
Greenbrier International, Inc.  
500 Volvo Parkway  
Chesapeake, Virginia 23320-1604

**Name and address of each public prosecutor to whom documents were mailed:**

See Distribution List

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: July 2, 2009

By: \_\_\_\_\_

Chantalle Zakarian

## Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201-0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20 <sup>th</sup> Street Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 4075 Main St Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 <sup>th</sup> Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2 <sup>nd</sup> Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 200 East Santa Clara Street, 16th Floor San Jose, CA 95113- 1905