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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

NATURAL RESOURCES DEFENSE  
COUNCIL,

Plaintiff,

v.

PETCO ANIMAL SUPPLIES STORES, INC., *et*  
*al.*,

Defendants.

Case No. RG09487873

**CONSENT JUDGMENT WITH  
SERGEANT'S PET CARE PRODUCTS,  
INC. AND RELATED RETAILER  
DEFENDANTS**

Date:  
Time:  
Dept: 20  
Judge: Hon. Robert Freedman  
Complaint Filed: April 23, 2009

**1. INTRODUCTION**

1.1 On December 2, 2009, Plaintiff Natural Resources Defense Council ("NRDC") filed a complaint (the "Complaint") initiating this action (the "Action") for civil penalties and injunctive relief in the Superior Court for the County of Alameda. The Complaint named several defendants, including Sergeant's Pet Care Products, Inc. ("Sergeant's) and several retailers, and alleged that each had manufactured, distributed, and/or sold flea and tick collars containing the chemical propoxur (the "Products") in California. The Complaint further alleges that under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and reasonable warning" before exposing individuals to propoxur, and that the defendants failed to do so.

1           1.2     Sergeant's is a corporation that employs more than 10 persons, and at some time  
2 relevant to the allegations of the Complaint manufactured Products, and shipped Products for sale in  
3 California.

4           1.3     Sergeant's manufactures and sells certain Products pursuant to Registration Number  
5 2517-61, issued to Sergeant's by the United States Environmental Protection Agency ("EPA") under  
6 the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq.*  
7 ("Sergeant's Registered Products"). Registration Number 2517-61 sets forth the language and  
8 information that can appear on the label of a Registered Product. EPA has reviewed and approved an  
9 amendment to Registration Number 2517-61 that allows the packaging for the Registered Products to  
10 carry the following Proposition 65 warning:

11                   NOTICE: This product contains a chemical (o-Isopropoxyphenyl  
12 methylcarbamate) (propoxur) known to the State of California to cause  
13 cancer.

14 (the "Sergeant's Warning"). Sergeant's asserts that it changed the packages for the Sergeant's  
15 Registered Products to include this warning language, and began shipping packaging containing the  
16 Sergeant's Warning into California in March 2008.

17           1.4     Other Products carrying the Sergeant's brand name are covered under FIFRA  
18 Registration Numbers 2724-491 and 2724-493, which are held by Wellmark International, another  
19 defendant to this Action (the "Wellmark Registered Products"). Sergeant's requested that Wellmark  
20 International, as the registrant for Registration Numbers 2724-491 and 2724-493, seek amendment of  
21 its registration to allow Sergeant's to include the Warning on the Wellmark Registered Products. In  
22 December 2009, after it received confirmation that Wellmark International had done so, Sergeant's  
23 began shipping the Wellmark Registered Products with the following Proposition 65 warning:

24                   Notice: This product contains propoxur, a chemical known to the State  
25 of California to cause cancer.

26 (the "Wellmark Warning"). Sergeant's asserts that, as of the Effective Date of this Consent  
27 Judgment, all Sergeant's Registered Products and Wellmark Registered Products shipped by  
28 Sergeant's carry the Sergeant's Warning or the Wellmark Warning.

1           1.5     Sergeant's asserts that products carrying the "Zema" brand name that were formerly  
2 sold in California (the "Zema Products"), were discontinued in December 2008.

3           1.6     Sergeant's Registered Products, Wellmark Registered Products, and Zema Products  
4 are hereinafter sometimes collectively referred to as the "Covered Products."

5           1.7     Albertsons, Inc., New Albertsons, Inc., PETCO Animal Supplies Stores, Inc.,  
6 Petsmart, Inc., PetSmart Store Support Group, Inc., Lee's Pet Club, Inc., d/b/a Pet Club Stores, Red  
7 Cart Market, Inc., d/b/a Pet Club Stores, and Ralphs Grocery Co. are retailers named as defendants in  
8 the Complaint that sold and/or sell Covered Products. For purposes of this Consent Judgment, these  
9 defendants, only to the extent they sold and/or sell Covered Products, are referred to collectively as  
10 "Retailers."

11          1.8     For purposes of this Consent Judgment only, NRDC, Sergeant's and the Retailers  
12 (collectively, the "Parties") stipulate that this Court has jurisdiction over the allegations of violations  
13 contained in the Complaint and personal jurisdiction over Sergeant's and the Retailers as to the acts  
14 alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has  
15 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or  
16 could have been raised against Sergeant's and the Retailers in the Complaint based on the facts  
17 alleged therein.

18          1.9     Except as expressly set forth herein, NRDC, Sergeant's and the Retailers enter into  
19 this Consent Judgment as a full and final settlement of all claims relating to the Covered Products  
20 arising from the alleged failure to warn regarding the presence of propoxur in such Covered Products.  
21 Sergeant's and the Retailers deny the material factual and legal allegations contained in the  
22 Complaint and maintain that all Covered Products they have sold in California and/or shipped for sale  
23 in California at all times relevant to the Complaint have been and are in compliance with all laws.  
24 Nothing in this Consent Judgment, including Sergeant's and the Retailers' execution of the Consent  
25 Judgment and agreement to provide the relief and remedies specified herein, shall be construed as an  
26 admission by Sergeant's or the Retailers of any fact, finding, issue of law, or violation of law, nor  
27 shall compliance with this Consent Judgment constitute or be construed as an admission by  
28 Sergeant's or the Retailers of any fact, finding, conclusion, issue of law, or violation of law, such

1 being specifically denied by Sergeant's and the Retailers. This Consent Judgment shall not be  
2 admissible in any action or proceeding except for proceedings to enforce or modify this Consent  
3 Judgment as set forth herein. However, this Paragraph shall not diminish or otherwise affect  
4 Sergeant's and the Retailers' obligations, responsibilities and duties to comply with this Consent  
5 Judgment.

6 1.10 The effective date of this Consent Judgment shall be the date on which the Consent  
7 Judgment is entered as a judgment by the Superior Court ("Effective Date").

## 8 2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS

9 2.1 Sergeant's shall assure that Covered Products manufactured and/or shipped for  
10 distribution to or sale in California on or after the Effective Date carry a warning, the language,  
11 location, and appearance of which is substantially similar to the Sergeant's Warning or the Wellmark  
12 Warning, consistent with Proposition 65 and the requirements of applicable FIFRA registrations  
13 issued by the EPA.

14 2.2 Beginning on the Effective Date, Sergeant's agrees that it shall not manufacture,  
15 distribute, or sell in California any Product pursuant to a FIFRA registration held by another  
16 individual or entity unless such FIFRA registration allows the inclusion of a Proposition 65 warning  
17 that is substantially similar in content and form to that set forth in section 2.1 of this Consent  
18 Judgment.

## 19 3. SETTLEMENT PAYMENTS

20 3.1 Sergeant's shall pay to NRDC the collective sum of \$30,000 as settlement proceeds  
21 ("Settlement Proceeds"). Settlement Proceeds shall be made payable to the Altshuler Berzon LLP  
22 Attorney-Client Trust Account and delivered to Altshuler Berzon LLP, at 177 Post Street, Suite 300,  
23 San Francisco, CA 94108, within ten (10) business days after the Effective Date, and shall be applied  
24 as follows:

25 3.1.1 Civil Penalty: Sergeant's shall pay civil penalties pursuant to Health & Safety  
26 Code section 25249.12 in the amount \$16,292.53. This amount shall be allocated between NRDC  
27 and the State of California as directed by Health & Safety Code section 25249.12(c)-(d). NRDC's  
28 portion shall be distributed to the Rose Foundation.

1                   **3.1.2 Attorneys' Fees and Costs:** \$13,703.47 shall be paid to reimburse NRDC for  
2 attorneys' fees and costs incurred by NRDC in litigating this matter as to the Covered Products and  
3 negotiating this Consent Judgment on behalf of itself and the general public. Sergeant's and the  
4 Retailers agree to bear their own attorneys' fees, expenses and costs associated with this Action and  
5 with *NRDC v. Albertsons, Inc., et al.*, Alameda County Superior Court Case No. RG 09448605.

6                   **4. MODIFICATION OF CONSENT JUDGMENT**

7                   **4.1** This Consent Judgment may be modified by written agreement of the Parties after  
8 noticed motion and upon entry of a modified consent judgment by the Court thereon, or upon motion  
9 of either Party as provided by law and upon entry of a modified consent judgment by the Court.  
10 Before filing an application with the Court for a modification to this Consent Judgment, the moving  
11 Party shall meet and confer with the other Party to determine whether the other Party will consent to  
12 the proposed modification, and shall submit any proposed modification to the California Attorney  
13 General for comment. If a proposed modification is agreed upon between the Parties, then the Parties  
14 will jointly present the modification to the Court by means of a stipulated modification to the Consent  
15 Judgment.

16                   **4.2 Regulatory Requirements.**

17                   Sergeant's shall notify NRDC in the event that a change to any state or federal statute or  
18 regulation governing the Covered Products or to the FIFRA registration for any Covered Product  
19 requires a change to the language or placement of the warnings required described in sections 1.3 and  
20 1.4. Where such changes are (1) nonmaterial, or (2) are imposed by the EPA but not requested by  
21 Sergeant's, the Parties shall stipulate that this Consent Judgment will be modified to correspond to  
22 such new requirement. Any other modification of the warnings will be governed by section 4.1.

23                   **4.3 Other Settlements.**

24                   **4.3.1** If NRDC agrees or has agreed in a settlement or judicially entered consent  
25 judgment with Wellmark or any other defendant to this Action that allows a Product to be shipped for  
26 sale and/or sold in California without a Proposition 65 warning; then the Parties shall stipulate that  
27 this Consent Judgment will be modified to correspond to such terms as provided in such other  
28 settlement or judicially entered consent judgment.

1                   4.3.2 If NRDC agrees or has agreed in a settlement or judicially entered consent  
2 judgment that some or all Products (as sold by other companies) do not require a warning under  
3 Proposition 65 (based on the presence of propoxur), or if a court of competent jurisdiction renders a  
4 final judgment and the judgment becomes final, that some or all Products (as sold by other  
5 companies) do not require a warning for propoxur under Proposition 65, Sergeant's may seek a  
6 modification of this Consent Judgment to eliminate its duty to warn.

7                   **5. ENFORCEMENT**

8                   5.1 NRDC may, after meeting and conferring with Sergeant's and/or the Retailers, by  
9 motion or application for an order to show cause before this Court, enforce the terms and conditions  
10 contained in this Consent Judgment against Sergeant's and/or the Retailers. In any such proceeding,  
11 NRDC may seek whatever fines, costs, penalties, or remedies are provided by law for failure to  
12 comply with the Consent Judgment and where said violations of this Consent Judgment constitute  
13 subsequent violations of Proposition 65 or other laws independent of the Consent Judgment and/or  
14 those alleged in the Complaint, NRDC is not limited to enforcement of the Consent Judgment, but  
15 may seek in another action whatever fines, costs, penalties, or remedies are provided for by law for  
16 failure to comply with Proposition 65 or other laws. In any action brought by NRDC alleging  
17 subsequent violations of Proposition 65 or other laws, Sergeant's and/or the Retailers may assert any  
18 and all defenses that are available.

19                   **6. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

20                   Each signatory to this Consent Judgment certifies that he or she is fully authorized by the  
21 Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the  
22 Consent Judgment on behalf of the Party represented and legally to bind that party.

23                   **7. CLAIMS COVERED**

24                   This Consent Judgment is a full, final, and binding resolution between the Parties of any  
25 violation of Proposition 65 or its implementing regulations or any other statutory or common law  
26 claims that have been or could have been asserted in the Complaint against Sergeant's and the  
27 Retailers for failure to provide clear and reasonable warnings of exposure to propoxur from the use of  
28 the Covered Products, or any other claim that was or could have been raised based on the facts or

1 conduct alleged in the Complaint as to such Covered Products. As to the Covered Products,  
2 compliance with the terms of this Consent Judgment resolves any issue now, in the past, and in the  
3 future concerning compliance by Sergeant's, its parents, shareholders, divisions, subdivisions,  
4 subsidiaries, sister companies, affiliates, cooperative members, licensees, agents and representatives,  
5 and the distributors, brokers, wholesalers, retailers, or other entities who sell or formerly  
6 manufactured or sold Covered Products; and the officers, directors, employees, attorneys, agents,  
7 representatives, predecessors, successors, and assigns of any of them, with the requirements of  
8 Proposition 65 and its implementing regulations.

9 **8. RETENTION OF JURISDICTION**

10 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

11 **9. PROVISION OF NOTICE**

12 **9.1** When any Party is entitled to receive any notice under this Consent Judgment, the  
13 notice shall be sent by overnight courier service to the person and address set forth in this Paragraph.  
14 Any party may modify the person and address to whom the notice is to be sent by sending each other  
15 party notice by certified mail, return receipt requested. Said change shall take effect for any notice  
16 mailed at least five days after the date the return receipt is signed by the party receiving the change.

17 **9.2** Notices shall be sent by First Class Mail and/or overnight delivery to the following  
18 when required:

19 For NRDC:

20 Jonathan Weissglass, Esq.  
21 Altshuler Berzon LLP  
22 177 Post Street, Suite 300  
23 San Francisco, CA 94108

24 For Sergeant's and the Retailers:

25 Michèle B. Corash, Esq.  
26 Morrison & Foerster LLP  
27 425 Market Street  
28 San Francisco, CA 94105

Kelly N. Pleas  
Legal Affairs Manager  
Sergeant's Pet Care Products, Inc.  
2625 South 158th Plaza  
Omaha NE 68130



1     **10. COURT APPROVAL**

2             **10.1** NRDC agrees to comply with the reporting requirements referenced in California  
3 Health and Safety Code section 25249.7(f). Pursuant to the regulations promulgated under that  
4 section, NRDC shall present this Consent Judgment to the California Attorney General's Office  
5 within five (5) days after receipt of all necessary signatures.

6             **10.2** The Parties acknowledge that, pursuant to Health and Safety Code section 25249.7, a  
7 noticed motion must be filed to obtain judicial approval of the Consent Judgment. Accordingly,  
8 NRDC shall file a motion for approval of the settlement within a reasonable period of time after the  
9 date this agreement is signed by all parties. NRDC also agrees to serve a copy of the noticed motion  
10 to approve and enter the Consent Judgment on the California Attorney General's Office, consistent  
11 with the requirements set forth in California Code of Regulations, title 11, section 3000(a).

12             **10.3** If this Consent Judgment is not approved by the Court, it shall be of no force or effect  
13 and cannot be used in any proceeding for any purpose.

14     **11. ENTIRE AGREEMENT; MUTUAL DRAFTING**

15             **11.1** This Consent Judgment contains the sole and entire agreement and understanding of  
16 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
17 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,  
18 express or implied, other than those contained herein have been made by any party hereto. No other  
19 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind  
20 any of the parties.

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11.2 This Consent Judgment is the result of mutual drafting and no ambiguity found herein shall be construed in favor of or against any party.

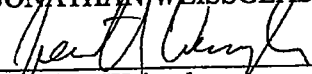
**12. EXECUTION IN COUNTERPARTS**

The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

APPROVED AS TO FORM:

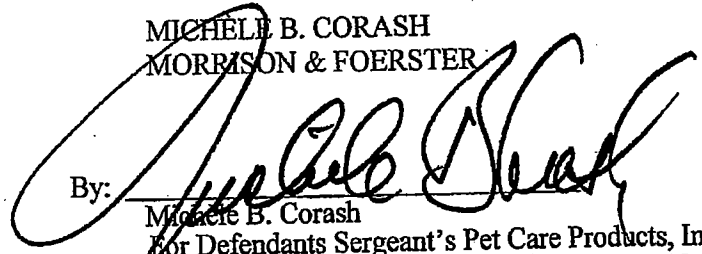
Dated: 9/30/2010

ALTSHULER BERZON LLP  
JONATHAN WEISSGLASS

By:   
Jonathan Weissglass  
For Plaintiff Natural Resources Defense Council

Dated:

MICHELE B. CORASH  
MORRISON & FOERSTER

By:   
Michele B. Corash  
For Defendants Sergeant's Pet Care Products, Inc., Albertsons, Inc., New Albertsons, Inc., PETCO Animal Supplies Stores, Inc., PetSmart, Inc., PetSmart Store Support Group, Inc., Lee's Pet Club, Inc., d/b/a Pet Club Stores, Red Cart Market, Inc., d/b/a Pet Club Stores, and Ralphs Grocery Co.

IT IS SO STIPULATED:

Dated:

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

For Plaintiff Natural Resources Defense Counsel

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IT IS SO STIPULATED:

Dated:

By: *Jim Alvar*  
For Plaintiff Natural Resources Defense Counsel

Dated:

By: \_\_\_\_\_  
For Defendant Sergeant's Pet Care Products, Inc.

Dated:

By: \_\_\_\_\_  
For Albertsons, Inc.,

Dated:

By: \_\_\_\_\_  
For New Albertsons, Inc.,

Dated:

By: \_\_\_\_\_  
For PETCO Animal Supplies Stores, Inc.

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By: \_\_\_\_\_  
For Petsmart, Inc.

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By: \_\_\_\_\_  
For PetSmart Store Support Group, Inc.

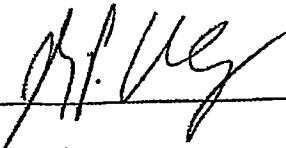
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By: \_\_\_\_\_  
For Lee's Pet Club, Inc., d/b/a Pet Club Stores

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Dated:

9-27-10

By: 

For Defendant Sergeant's Pet Care Products, Inc.

Dated:

By:  

Ronald T. Mendes  
Vice President

For Defendants New Albertsons, Inc. and  
SUPERVALU INC.

Dated:

By:  

Paul G. Rowan  
Sr. Vice President and General Counsel  
For Defendant Albertson's, Inc. and its affiliates, by  
Albertson's LLC (successor by conversion to  
Albertson's, Inc.)

Dated:

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

For Defendant PETCO Animal Supplies, Inc.

Dated:

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

For Defendants Petsmart, Inc., Petsmart Store Support  
Group, Inc.,

Dated:

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

For Defendant Ralphs Grocery Co.,

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Dated:

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

For Defendant Sergeant's Pet Care Products, Inc.

Dated:

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

For Defendants New Albertsons, Inc. f/k/a/ Albertsons, Inc., and SUPERVALU INC.

Dated:

9/10/10

By: Danah J. Davis

For Defendant PETCO Animal Supplies, Inc.

Dated:

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

For Defendants Petsmart, Inc., Petsmart Store Support Group, Inc.,

Dated:

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

For Defendant Ralphs Grocery Co.,

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Dated:

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

For Defendant Sergeant's Pet Care Products, Inc.

Dated:

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

For Defendants New Albertsons, Inc. f/k/a/ Albertsons, Inc., and SUPERVALU INC.

Dated:

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

For Defendant Albertson's, Inc. and its affiliates, by Albertson's LLC (successor by conversion to Albertsons, Inc.)

Dated:

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

For Defendant PETCO Animal Supplies, Inc.

Dated: 9/24/10

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

For Defendants Petsmart, Inc., Petsmart Store Support Group, Inc.,

Dated:

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

For Defendant Ralphs Grocery Co.,

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Dated:

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

For Defendant Sergeant's Pet Care Products, Inc.

Dated:

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

For Defendants New Albertsons, Inc. f/k/a/ Albertsons, Inc., and SUPERVALU INC.

Dated:

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

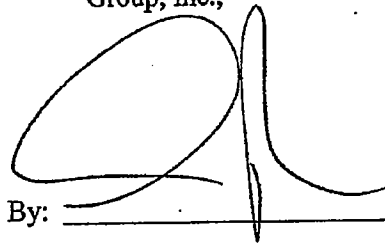
For Defendant PETCO Animal Supplies, Inc.

Dated:

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

For Defendants Petsmart, Inc., Petsmart Store Support Group, Inc.,

Dated:

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

For Defendant Ralphs Grocery Co.,

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Dated: 8.23.2010

By: Tamm Lee

TAMM LEE

For Defendant Lee's Pet Club, Inc. d/b/a Pet Club Stores  
and Red Cart Market, Inc. d/b/a Pet Club Stores

Dated:

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

For Defendant KV Vet Supply, Inc.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: Dec 10, 2010

Hon. Anthony Robert Freedman  
Judge of the Superior Court



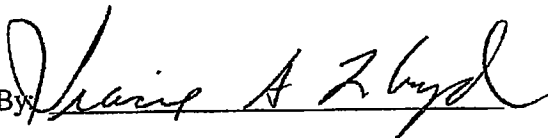
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Dated:

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

For Defendant Lee's Pet Club, Inc. d/b/a Pet Club Stores  
and Red Cart Market, Inc. d/b/a Pet Club Stores

Dated: 9/9/2010

By: 

For Defendant KV Vet Supply, Inc.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated:

\_\_\_\_\_  
Hon. Anthony Robert Freedman  
Judge of the Superior Court