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Counsel for Plaintiff Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CONSUMER ADVOCACY GROUP, INC., Plaintiff, v. **UNITED PET GROUP, INC.; SPECTRUM BRANDS, INC.;** *et al.*, Defendants.	CASE NO. BC-443645 [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. CAG is dedicated to, among other causes, protecting the environment, improving human health, and supporting environmentally sound practices.

1.2 Defendants: The Defendants are United Pet Group, Inc. ("UPG") and Spectrum Brands, Inc. ("Spectrum").

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

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

1.5 **The Complaint:** On August 13, 2010, Plaintiff filed a complaint against Defendants in the Superior Court for the City and County of Los Angeles ("Complaint") alleging that Defendants violated Proposition 65 by exposing individuals in California to p-dichlorobenzene (the "Covered Chemical"), designated under the Act as "known to the State of California to cause cancer" within the meaning of Section 25249.8(b), without providing Proposition 65 warnings to such individuals, as alleged to be required under Section 25249.6. According to the Complaint, individuals in California are exposed to the Covered Chemical upon consumption or foreseeable use of 8 in 1 Bird Protector™ for Small Birds/Cages and/or 8 in 1 Bird Protector™ for Large Birds/Cages, manufactured, packaged, distributed, marketed and/or sold by Defendants for use in California. These products are identified with specificity in Plaintiff's Notices and the Complaint, and such products, as identified in Plaintiff's Complaint and Notices, are referred to collectively herein as the "Covered Products."

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

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

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

1.8 Settlement. Plaintiff's Notices were issued to Defendants on February 23, 2010. The Parties have engaged in informal discovery and settlement negotiations since that time. As a result of this exchange of information, the Parties agree on some aspects of the allegations, but disagree as to several other aspects, and thus disagree as to whether Defendants have violated Proposition 65. Specifically, the Parties agree that each of the Covered Products contains the Covered Chemical. The Defendants dispute, however, that the manufacture, packaging, distribution, marketing, sale or use of the Covered Products results in the exposure of individuals

in California to the Covered Chemical in amounts, if any, that would require a warning under Proposition 65. Defendants further dispute Plaintiff's allegation that no Covered Products were sold in California with a clear and reasonable warning. Plaintiff disputes Defendants' assertions. Therefore, in order to avoid prolonged litigation and the waste of private and judicial resources that would arise from prosecuting, defending, and adjudicating the issues on which the Plaintiff and Defendants disagree, the Parties have agreed, subject to the approval of the Court, to compromise their disputed claims and defenses, and have entered into a settlement agreement, the terms of which are embodied in this Consent Judgment.

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

2. INJUNCTIVE RELIEF

2.1 The Parties acknowledge that UPG is the entity that distributes the Covered Products and, accordingly, the injunctive relief requirements established herein apply only to it.

In the spirit of settlement and compromise, and in order to promote the public interest, UPG agrees to provide the following warning on Covered Products it distributes in California:

> **NOTICE**: This product contains a chemical known to the State of California to cause cancer.

The warning statement above shall be provided on the label of the Covered Products in a conspicuous manner, where other precautionary statements appear. The Parties acknowledge that the signal word "NOTICE" in Proposition 65 warnings for pesticides is necessary and appropriate because federal regulations promulgated under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), and related guidance documents, prohibit the use of the signal word "WARNING" except in circumstances not presented by Plaintiff's claims. Plaintiff has agreed to the use of the "NOTICE" signal word herein solely due to the application of FIFRA in this matter.

2.2 The Parties acknowledge that no changes to the label or labeling for any Covered Products that are the subject of this Consent Judgment can be made except as permitted by certain federal and California agencies in their implementation of state and federal laws, other than Proposition 65, that regulate the manufacture, sale, labeling, distribution and use of these Covered Products. UPG has submitted to the U.S. Environmental Protection Agency revised labels for the Covered Products incorporating the warning statement described in Section 2.1 above, and UPG shall not be required to implement the warning provision of Section 2.1 until 90 days after the last relevant regulatory agency has approved, in writing, the proposed label change. No Defendant shall be required to re-label or recall any Covered Products in the stream of commerce at the time this Consent Judgment is approved and no Defendant shall be required to change the use instructions on the label from those approved previously by such federal and California agencies. Under no circumstances shall this Consent Judgment be interpreted to require any Defendant to make any other applications or secure any other approvals from federal or state agencies regarding the labeling (including specifically the use instructions or warnings thereon) for the Covered Products, on any other aspect of their manufacture, distribution, sale or use or to distribute any Covered Product in violation of federal and California labeling requirements as such labeling requirements are interpreted by the applicable federal or California agency.

3. MONETARY PAYMENTS

3.1 In settlement of Plaintiff's claims against it and Spectrum, UPG shall pay a total of $67,500 to Plaintiff, as described in paragraphs 3.2 and 3.3 below. Spectrum shall not be required to make any separate payment to Plaintiff.

3.2 Payment In Lieu of Civil Penalties: Within ten (10) days after the Court approves this Consent Judgment, UPG shall pay or cause to be paid $9,500 in the form of a check made payable to Consumer Advocacy Group, Inc. CAG will use the payment for such projects and purposes related to environmental protection, worker health and safety, or reduction of human exposure to hazardous substances (including administrative and litigation costs arising from such projects), as CAG may choose. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

3.3 Reimbursement of Attorneys Fees and Costs: Within ten (10) days after the Court approves this Consent Judgment, UPG shall pay or cause to be paid $58,000 in the form of a check made payable to "YEROUSHALMI & ASSOCIATES" as reimbursement for the investigation fees and costs, testing costs, expert witness fees, attorneys fees, and other litigation costs and expenses. The check shall be delivered by overnight delivery to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

4. WAIVER AND RELEASE OF ALL CLAIMS

4.1 Waiver And Release of Claims Against Defendants: As to those matters raised in this Action, the Complaint, and/or in Plaintiff's Notices (whether as to Covered Products or as to the Covered Chemical, and without regard to any potential disputes about the adequacy of such Notices), and any related actions, Plaintiff, on behalf of the general public, hereby releases Defendants and waives any claims against Defendants for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed for any claims under Proposition 65 or any related actions

arising from the sale, distribution or use in California of any Covered Products, including all claims that may arise from the acts alleged in the Plaintiff's Notices or the Complaint.

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

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

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

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

4.5. For purposes of this entire paragraph 4, the terms "Plaintiff" and "Defendants" are defined as follows. The term "Plaintiff" includes the Plaintiff as defined at paragraph 1.1 above, and also includes its members, subsidiaries, successors, and assigns and its directors, officers, agents, attorneys, representatives, and employees. The term "Defendants" includes the

Defendants, as that term is defined in paragraph 1.2 above; their respective corporate affiliates (including any and all corporate parents and subsidiaries); the directors, officers, agents, attorneys, representatives, employees, licensors, licensees, predecessors, or successors of any of them; and their respective downstream customers (including distributors and retailers) of the Covered Products and the predecessors, successors and assigns of any of them.

5. MODIFICATION OF CONSENT JUDGMENT

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

5.1 This paragraph shall not apply to the monetary relief sections of this Consent Judgment.

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

6. ENFORCEMENT OF CONSENT JUDGMENT

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

6.2 The Parties may enforce the terms and conditions of this Consent Judgment pursuant to paragraph 6.1 only after the complaining party has first given thirty (30) days notice to the Party allegedly failing to comply with the terms and conditions of the Consent Judgment and has attempted, in an open and good faith manner, to resolve such Party's alleged failure to comply.

7. GOVERNING LAW

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

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

8. ENTIRE AGREEMENT

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

9. NOTICES

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

For Plaintiff:

Yeroushalmi & Associates
Attn: Reuben Yeroushalmi
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, California 90212

For Defendants:

McKenna Long & Aldridge LLP
Attn: Ann Grimaldi, Esq.
101 California Street, 41st Floor
San Francisco, California 94111

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

10. COURT APPROVAL

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

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

If the Court enters this Consent Judgment, Plaintiff shall, within ten (10) working days thereafter, electronically provide or otherwise serve a copy of it and the report required pursuant to 11 *Cal. Code Regs.* § 3003 to the California Attorney General's Office.

11. AUTHORIZATION

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

12. COUNTERPARTS/FACSIMILE SIGNING

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

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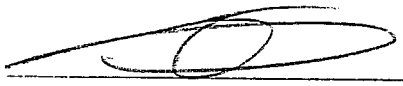
IT IS SO STIPULATED:

Dated: 1/14/11

CONSUMER ADVOCACY GROUP, INC.



(Signature)

MICHEL SASSOON

(Name)

EXECUTIVE DIRECTOR

(Title)

Dated: _____

UNITED PET GROUP, INC.

_____

(Signature)

_____

(Name)

_____

(Title)

Dated: _____

SPECTRUM BRANDS, INC.

_____

(Signature)

_____

(Name)

_____

(Title)

IT IS SO STIPULATED:

Dated: _____

CONSUMER ADVOCACY GROUP, INC.

_____
(Signature)

_____
(Name)

_____
(Title)

Dated: Jan. 10, 2011

UNITED PET GROUP, INC.

_____
(Signature)

John T. Wilson
(Name)

Vice President and Secretary
(Title)

Dated: Jan. 10, 2011

SPECTRUM BRANDS, INC.

_____
(Signature)

John T. Wilson
(Name)

Senior Vice President, Secretary and General Counsel
(Title)

APPROVED AS TO FORM:

Dated: 1/21/11

REUBEN YEROUSHALMI

YEROUSHALMI AND ASSOCIATES
COUNSEL FOR PLAINTIFF CONSUMER ADVOCACY GROUP, INC.

Dated: 1/19/2011

ANN GRIMALDI

MCKENNA LONG & ALDRIDGE
COUNSEL FOR DEFENDANTS UNITED PET, INC. AND SPECTRUM BRANDS, INC.

IT IS SO ORDERED:

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

Dated: 4/14/11

JUDGE OF THE SUPERIOR COURT

SF:27438676.1

EXHIBIT A

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")

February 23, 2010

Mr. John A. Heil, President, or
Current President/CEO
United Pet Group, Inc.
7794 Five Mile Road, Suite 190
Cincinnati, OH 45230

Mr. Kent J. Hussey, President, or
Current President/CEO
Spectrum Brands, Inc.
Six Concourse Parkway, Suite 3300
Atlanta, GA 30328

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

Re: Violations of Proposition 65 concerning **(1) 8 in 1® BIRD PROTECTOR PROTECTS BIRDS FROM LICE AND MITES For Small Cages (Item No. C311) and (2) 8 in 1® BIRD PROTECTOR PROTECTS BIRDS FROM LICE AND MITES For Large Cages (Item No. C310)**

Dear Messrs. Heil and Hussey, and to whom else this may concern:

Consumer Advocacy Group, Inc. ("CAG"), the noticing entity, serves this Notice of Violation ("Notice") on United Pet Group, Inc. and Spectrum Brands, Inc. (collectively "Violators") pursuant to and in compliance with Proposition 65. Violators 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 Violators 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. CAG is a nonprofit entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65.

- 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.

  - **(1) 8 in 1® BIRD PROTECTOR PROTECTS BIRDS FROM LICE AND MITES For Small Cages (Item No. C311) and (2) 8 in 1® BIRD PROTECTOR PROTECTS BIRDS FROM LICE AND MITES For Large Cages (Item No. C310)** contain p-Dichlorobenzene which is

known to the State of California to cause cancer. On January 1, 1989, the Governor of California added p-Dichlorobenzene to the list of chemicals known to the State to cause cancer. This addition took place more than twenty (20) 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.* tit. 27, § 25602(b).

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers **(1) 8 in 1® BIRD PROTECTOR PROTECTS BIRDS FROM LICE AND MITES For Small Cages (Item No. C311) and (2) 8 in 1® BIRD PROTECTOR PROTECTS BIRDS FROM LICE AND MITES For Large Cages (Item No. C310) (hereinafter "Bird Protectors").** The packaging for the **Bird Protectors** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contain no Proposition 65-complaint warning. Nor did Violators, with regard to the **Bird Protectors**, 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 Violators, with regard to the **Bird Protectors**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof. The **Bird Protectors** is a pesticide designed to treat pet birds in the home or other environments and designed for application in confined spaces.

- This Notice also addresses environmental exposures. An "[e]nvironmental exposure' is an exposure which may foreseeably occur as the result of contact with an environmental medium, including, but not limited to, ambient air, indoor air, drinking water, standing water, running water, soil vegetation, or manmade or natural substances, either through inhalation, ingestion, skin contact or otherwise. Environmental exposures include all exposures which are not consumer products exposures, or occupational exposures." *Cal. Code Regs.* tit. 27, § 25602(c).

Violators caused environmental exposures by not providing any Proposition 65-compliant warnings with the **Bird Protectors**. Environmental exposures occur on and beyond the property owned or controlled by Violators when the p-Dichlorobenzene existing in the **Bird Protectors** is released from the **Bird Protectors** as a gas into environmental mediums such as indoor air, outdoor air and ambient air and expose individuals.

These violations occurred each day between February 23, 2007, and February 23, 2010, and are ever continuing thereafter.

The principal routes of exposure were through inhalation, dermal contact, and ingestion. Persons sustain exposures by breathing in vapor emanating from the **Bird Protectors** during application and installation, as well as through environmental mediums that carry the p-Dichlorobenzene once contained within the **Bird Protectors**, or by handling the **Bird Protectors** without wearing gloves or by touching bare skin or mucous membranes with gloves after handling **Bird Protectors**, as well as hand to mouth contact, hand to mucous membrane.

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 Violators 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 within the United States but beyond the State of California), CAG may file suit. *See Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* §

25249.7(d)(1); and *Cal. Code Regs.* tit. 27, § 25903(d)(1). CAG is ready and willing to discuss the possibility of resolving its grievances in the public interest short of formal litigation.

Dated: 02-23-2010

Reuben Yeroushalmi
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:(l) 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.

(1) 8 in 1® BIRD PROTECTOR PROTECTS BIRDS FROM LICE AND MITES For Small Cages (Item No. C311) and (2) 8 in 1® BIRD PROTECTOR PROTECTS BIRDS FROM LICE AND MITES For Large Cages (Item No. C310)

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: 02-23-2010

By: Reuben Yeroushalmi

(1) 8 in 1® BIRD PROTECTOR PROTECTS BIRDS FROM LICE AND MITES For Small Cages (Item No. C311) and (2) 8 in 1® BIRD PROTECTOR PROTECTS BIRDS FROM LICE AND MITES For Large Cages (Item No. C310)

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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: 02-23-2010

By: Reuben Yeroushalmi

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:

Mr. John A. Heil, President, or
Current President/CEO
United Pet Group, Inc.
7794 Five Mile Road, Suite 190
Cincinnati, OH 45230

Mr. Kent J. Hussey, President, or
Current President/CEO
Spectrum Brands, Inc.
Six Concourse Parkway, Suite 3300
Atlanta, GA 30328

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: 03/08/10

By: _____
Jessie Mahn

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. 20th 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., 4th 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., 2nd 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