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OCT 16 2013

WILLIAM TURNER, Court Reporter  
MARIN CO. SUPERIOR COURT  
100 J. STREET, SUITE 100  
DUBLIN, CALIF. 94568

1 YEROUSHALMI & ASSOCIATES  
2 Reuben Yeroushalmi (SBN 193981)  
3 9100 Wilshire Boulevard, Suite 610E  
4 Beverly Hills, California 90212  
5 Telephone: (310) 623-1926  
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7 Attorneys for Plaintiff  
8 CONSUMER ADVOCACY GROUP, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF MARIN

11 CONSUMER ADVOCACY GROUP,

12 Plaintiff,

13 v.

14 UNITED INDUSTRIES CORPORATION  
15 a/k/a CHEMSICO, INC., d/b/a SPECTRUM,  
16 d/b/a SPECTRUM GROUP, d/b/a  
17 CHEMSICO, d/b/a WPC BRANDS, INC.,  
18 d/b/a SYLORR PLANT CORP., d/b/a  
19 SYLORR, d/b/a REALEX, d/b/a CUTTER,  
20 d/b/a SPECTRACIDE, d/b/a REPEL, and d/b/a  
HOT SHOT, a Delaware Corporation,  
SCHULTZ COMPANY, a Delaware  
Corporation, SPECTRUM BRANDS, INC., a  
Delaware Corporation, SPECTRUM BRANDS  
HOLDINGS, INC., a Delaware Corporation,  
and DOES 1-20

21 Defendant.

Case No. CIV 1205555

Assigned For All Purposes To The  
Honorable Roy Chernus

~~PROPOSED~~ CONSENT JUDGMENT

By Fax

22 1. INTRODUCTION

23 1.1 This Consent Judgment is entered into by and between plaintiff Consumer  
24 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and  
25 defendants United Industries Corporation (a/k/a Chemsico, Inc., d/b/a Spectrum, d/b/a Spectrum  
26 Group, d/b/a Chemsico, d/b/a WPC Brands, Inc., d/b/a Sylorr Plant Corp., d/b/a Sylorr, d/b/a  
27 Realex, d/b/a Cutter, d/b/a Spectracide, d/b/a Repel, and d/b/a Hot Shot) (collectively, "United  
28

1 Industries Corporation”), Schultz Company, Spectrum Brands, Inc., and Spectrum Brands  
2 Holdings, Inc. (collectively “Defendants”), with each a Party and collectively referred to as  
3 “Parties.”

4 1.2 Defendant United Industries Corporation employs ten or more persons, and is a  
5 person in the course of doing business for purposes of the Safe Drinking Water and Toxic  
6 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”)  
7 that formerly distributed or sold Fertilizers containing Cadmium. Defendant Spectrum Brands,  
8 Inc. employs ten or more persons and is a person in the course of doing business for purposes of  
9 Proposition 65, but which has never distributed or sold Fertilizers containing Cadmium.  
10 Cadmium is known to the State of California to cause cancer and birth defects or other  
11 reproductive harm.

12 1.3 **Notice of Violation.**

13 1.3.1 On or about July 17, 2011, CAG served Defendants and various public  
14 enforcement agencies with a document entitled “60-Day Notice of Violation” (“July 17,  
15 2011 Notice”) that provided the recipients with notice of alleged violations of Health &  
16 Safety Code § 25249.6 for failing to warn individuals in California of exposures to  
17 Cadmium contained in Fertilizers, an exemplar of which includes, but is not limited to,  
18 “Bandini® Rose Food, 10-12-10 with Iron, 5lb” allegedly sold by Defendants. No public  
19 enforcer has commenced or diligently prosecuted the allegations set forth in the July 17,  
20 2011 Notice.

21 1.4 **Complaint.**

22 1.4.1 On December 13, 2012, CAG filed a Complaint for civil penalties and  
23 injunctive relief (“Complaint”) in Marin County Superior Court, Case No. CIV 120555,  
24 against Defendants. The Complaint alleges, among other things, that Defendants violated  
25 Proposition 65 by failing to give clear and reasonable Proposition 65 warnings of  
26 exposure to Cadmium from Fertilizers.

27 1.5 **Consent to Jurisdiction.**

28 Solely for purposes of this Consent Judgment, the parties stipulate that this Court has

1 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
2 over Defendants as to the acts alleged in the Complaint, that venue is proper in the County of  
3 Marin and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and  
4 resolution of the allegations contained in the Complaint and of all claims which were or could  
5 have been raised by any person or entity based in whole or in part, directly or indirectly, on the  
6 facts alleged therein or arising therefrom or related to.

7 **1.6 No Admission.**

8 This Consent Judgment resolves claims that are denied and disputed. The parties enter  
9 into this Consent Judgment pursuant to a full and final settlement of any and all claims between  
10 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not  
11 constitute an admission with respect to any material allegation of the Complaint, each and every  
12 allegation of which Defendants deny, nor may this Consent Judgment or compliance with it be  
13 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of  
14 Defendants.

15 **2. DEFINITIONS**

16 2.1 "Covered Products" means granular Fertilizers containing Cadmium sold by  
17 Defendants.

18 2.2 "Effective Date" means the date that this Consent Judgment is approved by the  
19 Court.

20 2.3 "Notice" means the July 17, 2011 Notice.

21 **3. INJUNCTIVE RELIEF/REFORMULATION.**

22 3.1 On or after the Effective Date, Defendants United Industries Corporation and  
23 Spectrum Brands, Inc. shall not purchase in California, import into California, manufacture in  
24 California, distribute in or into California, sell in California, or offer for sale to California  
25 consumers Covered Product causing exposure to humans to cadmium unless such product bears a  
26 Proposition 65 warning on the product labeling as required by applicable California law. On or  
27 after the Effective Date, should Defendants Schultz Company and/or Spectrum Brands Holdings,  
28 Inc. employ ten or more persons, said Defendants shall not purchase in California, import into

1. California, manufacture in California, distribute in or into California, sell in California, or offer  
2 for sale to California consumers Covered Product causing exposure to humans to cadmium unless  
3 such product bears a Proposition 65 warning on the product labeling as required by applicable  
4 California law. Any warning provided pursuant to this section shall be prominently placed with  
5 such conspicuousness as compared with other words, statements, designs, or devices as to render  
6 it likely to be read and understood by an ordinary individual under customary conditions before  
7 purchase or use and shall state:

8           **WARNING:** This product contains a chemical known to the State of California  
9                           to cause cancer and birth defects or other reproductive harm.

10 **4. SETTLEMENT PAYMENT**

11           **4.1 Settlement Amount:** Within 10 days of the Effective Date of this Consent  
12 Judgment, Defendants shall pay the total sum of \$55,000 as a settlement payment in full and  
13 complete settlement of all monetary claims by CAG related to the Notice, as follows.

14                   **4.1.1 Payment In Lieu of Civil Penalties:** Defendants shall pay \$1,000 in lieu  
15 of civil penalties to "Consumer Advocacy Group, Inc." CAG will use the payment for  
16 such projects and purposes related to environmental protection, worker health and safety,  
17 or reduction of human exposure to hazardous substances (including administrative and  
18 litigation costs arising from such projects), as CAG may choose.

19                   **4.1.2 Reimbursement of Attorneys Fees and Costs:** Defendants shall pay  
20 \$50,000 to "Yeroushalmi & Associates" as reimbursement for the investigation fees and  
21 costs, testing costs, expert fees, attorney fees, and other litigation costs and expenses for  
22 all work performed through the approval of this Consent Judgment.

23                   **4.1.3 Civil Penalty:** Defendant shall issue two separate checks for a total amount  
24 of \$4,000 as penalties pursuant to Health & Safety Code § 25192: (a) one check made  
25 payable to the State of California's Office of Environmental Health Hazard Assessment  
26 (OEHHA) in the amount of \$3,000, representing 75% of the total penalty; and (b) one  
27 check to Consumer Advocacy Group, Inc. in the amount of \$1,000, representing 25% of  
28

1 the total penalty. Two separate 1099s shall be issued for the above payments: The first  
2 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-  
3 0284486) in the amount of \$3,000. The second 1099 shall be issued in the amount of  
4 \$1,000 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard,  
5 Suite 610E, Beverly Hills, California 90212.

6 4.2 **Delivery of Payments:** Payments shall be delivered to: Reuben Yeroushalmi,  
7 Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

8 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

9 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on  
10 behalf of itself and in the public interest and Defendants and its officers, directors, insurers,  
11 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
12 companies and their successors and assigns ("Defendant Releasees") and each of their suppliers,  
13 customers, distributors, wholesalers, retailers, or any other person in the course of doing business,  
14 and the successors and assigns of any of them, who may use, maintain, distribute or sell Covered  
15 Products ("Downstream Defendant Releasees"), for all claims for violations of Proposition 65 up  
16 through the Effective Date based on exposure to Cadmium from Covered Products as set forth in  
17 the Notice. Defendants' and Defendant Releasees' compliance with this Consent Judgment shall  
18 constitute compliance with Proposition 65 with respect to Cadmium from the Covered Products  
19 as set forth in the Notice.

20 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
21 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
22 indirectly, any form of legal action and releases all claims, including, without limitation, all  
23 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
24 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert  
25 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or  
26 contingent (collectively "Claims"), against Defendants, Defendant Releasees, and Downstream  
27 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or  
28 common law regarding the failure to warn about exposure to Cadmium in Covered Products. In

1 furtherance of the foregoing, as to alleged exposures to Covered Products, CAG hereby waives  
2 any and all rights and benefits which it now has, or in the future may have, conferred upon it with  
3 respect to the Claims by virtue of the provisions of section 1542 of the California Civil Code,  
4 which provides as follows:

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

10 CAG understands and acknowledges that the significance and consequence of this waiver of  
11 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
12 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,  
13 including but not limited to any exposure to, or failure to warn with respect to exposure to  
14 Cadmium from Covered Products, CAG will not be able to make any claim for those damages  
15 against Defendants or the Released Entities. Furthermore, CAG acknowledges that it intends  
16 these consequences for any such Claims as may exist as of the date of this release but which CAG  
17 does not know exist, and which, if known, would materially affect their decision to enter into this  
18 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,  
19 oversight, error, negligence, or any other cause.

20 **6. ENFORCEMENT OF JUDGMENT**

21       6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
22 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
23 California, Marin County, giving the notice required by law, enforce the terms and conditions  
24 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment  
25 only after that Party first provides 30 days' notice to the Party allegedly failing to comply with the  
26 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to  
27 comply in an open and good faith manner.

28       6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of  
Violation ("NOV") to Defendants. The NOV shall include for each Covered Product: the date(s)

1 the alleged violation(s) was observed and the location at which the Covered Product was offered  
2 for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered  
3 Product, including an identification of the component(s) of the Covered Product that were tested.

4           6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the  
5 alleged violation if, within 30 days of receiving such NOV, Defendants serve a Notice of  
6 Election ("NOE") demonstrating that:

7           (a) The Covered Product was shipped by Defendants for sale in  
8 California before the Effective Date, or

9           (b) Since receiving the NOV Defendants have taken corrective action  
10 by either (i) requesting that its customers in California remove the Covered Product  
11 identified in the NOV from sale in California and destroy or return the Covered Product to  
12 Defendants, or (ii) providing a clear and reasonable warning for the Covered Product  
13 identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

14           6.2.2 **Contested NOV.** Defendants may serve an NOE informing CAG of its  
15 election to contest the NOV within 30 days of receiving the NOV.

16           (a) In its election, Defendants may request that the sample(s) Covered  
17 Product tested by CAG be subject to confirmatory testing at an EPA-accredited  
18 laboratory.

19           (b) If the confirmatory testing establishes that the Covered Product  
20 does not contain Cadmium in excess of the level allowed in Section 3.1, CAG shall take  
21 no further action regarding the alleged violation. If the testing does not establish  
22 compliance with Section 3.1, Defendants may withdraw its NOE to contest the violation  
23 and may serve a new NOE pursuant to Section 6.2.1.

24           (c) If Defendants do not withdraw an NOE to contest the NOV, the  
25 Parties shall meet and confer for a period of no less than 30 days before CAG may seek an  
26 order enforcing the terms of this Consent Judgment.

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1           6.3    In any proceeding brought by either Party to enforce this Consent Judgment, such  
2 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
3 violation of Proposition 65 or this Consent Judgment.

4           **7.    ENTRY OF CONSENT JUDGMENT**

5           7.1    CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
6 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
7 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint.

8           7.2    If this Consent Judgment is not approved by the Court, (a) this Consent Judgment  
9 and any and all prior agreements between the parties merged herein shall terminate and become  
10 null and void, and the actions shall revert to the status that existed prior to the execution date of  
11 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the  
12 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall  
13 have any effect, nor shall any such matter be admissible in evidence for any purpose in this  
14 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine  
15 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

16           7.3    If this Consent Judgment is not entered by the Court, and the Parties have  
17 exhausted their meet and confer efforts pursuant to Section 7.2, upon 15 days' written notice from  
18 Defendants for the refund of any and all payments made by Defendants to Yeroushalmi &  
19 Associates in trust pursuant to Section 4.1, Yeroushalmi & Associates shall refund any and all  
20 such payments made by Defendants to Yeroushalmi & Associates in trust.

21           **8.    MODIFICATION OF JUDGMENT**

22           8.1    This Consent Judgment may be modified only upon written agreement of the  
23 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
24 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

25           8.2    Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
26 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

27  
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1 **9. RETENTION OF JURISDICTION**

2 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
3 terms of this Consent Judgment.

4 **10. DUTIES LIMITED TO CALIFORNIA**

5 10.1 This Consent Judgment shall have no effect on Covered Products sold by  
6 Defendants outside the State of California.

7 **11. SERVICE ON THE ATTORNEY GENERAL**

8 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, and the  
9 motion for approval of this Consent Judgment on the California Attorney General in accordance  
10 with 11 C.C.R. § 3003.

11 **12. ATTORNEY FEES**

12 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs  
13 and attorney fees in connection with this action.

14 **13. ENTIRE AGREEMENT**

15 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
16 of 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  
18 otherwise, express or implied, other than those contained herein have been made by any party  
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
20 deemed to exist or to bind any of the parties.

21 **14. GOVERNING LAW**

22 14.1 The validity, construction and performance of this Consent Judgment shall be  
23 governed by the laws of the State of California, without reference to any conflicts of law  
24 provisions of California law.

25 14.2 The Parties, including their counsel, have participated in the preparation of this  
26 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
27 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
28 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or

1 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
2 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
3 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
4 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
5 this regard, the Parties hereby waive California Civil Code § 1654.

6 **15. EXECUTION AND COUNTERPARTS**

7 15.1 This Consent Judgment may be executed in counterparts and by means of  
8 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
9 one document.

10 **16. NOTICES**

11 16.1 Any notices under this Consent Judgment shall be by personal delivery, overnight  
12 courier, or certified First Class Mail.

13 If to CAG:

14 Reuben Yeroushalmi, Esq.  
15 Yeroushalmi & Associates  
16 9100 Wilshire Boulevard, Suite 610E  
17 Beverly Hills, CA 90212  
18 Tel: (310) 623-1926

17 If to Defendants:

18 Spectrum Brands, Inc.  
19 601 Rayovac Drive  
20 Madison, WI 52711  
21 Attn: Nathan Fagre  
22 Senior Vice President, General Counsel & Secretary

23 United Industries Corporation  
24 1 Rider Trail Plaza Drive, Ste. 300  
25 Earth City, MO 63045-1313  
26 Attn: Michael G. Pfefferkorn  
27 Division Vice President, Legal and Regulatory Affairs

28 With a copy to:

Robert Schuda, Esq.  
McKenna, Long & Aldridge, LLP  
300 South Grand Ave., 14<sup>th</sup> Floor  
Los Angeles, CA 90071

16.2 Each Party may revise its designated notice recipient(s) in Section 16.1 by  
providing written notice to the other Party.

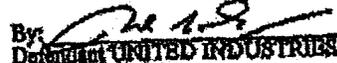
17. AUTHORITY TO STIPULATE

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

AGREED TO:  
Sept.  
Date: August 9, 2013

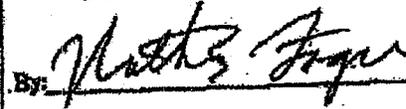
AGREED TO:  
Sept.  
Date: August 9, 2013

By:   
Name: Michael Sussan  
Plaintiff CONSUMER ADVOCACY GROUP, INC.

By:   
Name: UNITED INDUSTRIES CORPORATION

AGREED TO:  
Sept 9  
Date: August 9, 2013

AGREED TO:  
Sept  
Date: August 9, 2013

By:   
Name: Defendant SPECTRUM BRANDS, INC.

By:   
Name: Defendant SPECTRUM BRANDS HOLDINGS, INC.

AGREED TO:  
Sept  
Date: August 9, 2013

By:   
Name: Defendant SCHULTZ COMPANY

IT IS SO ORDERED.

OCT 16 2013

ROY CHERNUS

JUDGE OF THE SUPERIOR COURT