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Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CONSUMER ADVOCACY GROUP, INC., Plaintiff, v. **WELLMARK INTERNATIONAL, INC.,** *et al.*, Defendants.	CASE NO. BC392118 **[PROPOSED] CONSENT JUDGMENT** (*Health and Safety Code* § 25249 *et seq.*)

1. INTRODUCTION

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

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

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

1.3 The Parties: Plaintiff and Defendants are sometimes referred to herein 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, listed at Exhibit A to this Consent Judgment and attached at Tabs 1-30 thereto ("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 officials commenced an action pursuant to Plaintiff's Notices.

1.5 The Complaint. On June 5, 2008, 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 one or more of the chemicals known as di-*n*-propyl isocinchomeronate, chlorothalonil, hydramethylnon, myclobutanil, triadimefon, fluazifop butyl, and/or arsenic, all of which have been designated under the Act as "known to the State of California to cause cancer or reproductive toxicity" within the meaning of Section 25249.8(b) (the "Covered Chemicals"), without providing Proposition 65 warnings to such individuals, as alleged to be required under Section 25249.6. According to the Complaint, the alleged exposures to the Covered Chemicals occur when individuals in California use or apply certain home and garden products that are 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 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 Chemicals 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. The first of Plaintiff's Notices was issued in December 2006. The Parties began engaging in informal discovery shortly thereafter and have been engaged in extensive negotiations almost continually 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 one of the Covered Chemicals, and that none of the Defendants has distributed Proposition 65 warnings with respect to the Covered Products. 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 (or elsewhere) to the Covered Chemicals in amounts, if any, that would require a warning under Proposition 65. Defendants also assert other affirmative defenses. In support of their assertions, Defendants have presented scientific evidence to demonstrate that any exposure to the Covered Chemicals that results from any reasonably anticipated use of the Covered Products, in the words of Section 25249.10(c), "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 . . . ." Plaintiff disputes Defendants' assertions. In support of its position, Plaintiff has presented evidence to dispute Defendants' evidence with respect to some of the Covered Chemicals and Covered Products, and asserts that this evidence also demonstrates that Defendants' evidence with respect to all of the Covered Chemicals and Covered Products does not satisfy Defendant's burden under Section 25249.6. 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 (and, as to Spectrum, either the approval of the Bankruptcy Court or Spectrum's emergence from bankruptcy as set forth in greater detail in Section 6 of this Consent Judgment) 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 Chemicals 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 preempted by Federal law, or that Defendants have committed any violations of Proposition 65, or any other law or legal duty and specifically deny that they have committed any such violations. 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.6 In any case where a Defendant has agreed in this Consent Judgment to include any instructions on the label for a Covered Product, 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, and further that Defendants' obligations to make changes to the labels for any Covered Products under this Consent Judgment are as follows: (1) within 60 days following notice that this Consent Judgment has been approved and has become a final order of the Court, notifying the applicable federal and California agencies of the proposed change to the use instructions on the label; and (2) within 120 days following the delivery of such notification to the applicable federal and California agencies, include such changed use instructions on the first production run of the label of such Covered Product after the notification of such changed use instructions has been submitted to the applicable federal and California agencies, provided that 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 that no Defendant shall be required to change the use instructions on the label from those approved previously by

such federal and California agencies prior to the approval of such change by such agencies, and further provided that no Defendant is required by federal or California state agencies to generate testing data or or submit data or reformulate its Covered Product(s) to support its changed use instructions. 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 this matter, Defendants collectively have agreed to make the monetary payments totaling $337,500, as described in paragraphs 3.2 and 3.3 below.

3.2 Payment In Lieu of Civil Penalties: Within thirty (30) days following notice of approval and entry of this Consent Judgment by the Court, Defendants shall pay $77,500 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, 3700 Wilshire Boulevard, Suite 480, Los Angeles, California 90010.

3.3 Reimbursement of Attorneys Fees and Costs: Within thirty days following notice of approval and entry of this Consent Judgment, Defendants shall pay $260,000 in the form of a check made payable to "Reuben Yeroushalmi, Attorney Client Trust Account" 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, 3700 Wilshire Boulevard, Suite 480, Los Angeles, California 90010.

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, or in Plaintiff's Notices (whether as to Covered Products or as to Covered Chemicals, 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 or Covered Chemicals, including all claims that may arise from the acts alleged in the Plaintiff's Notices or the Complaint. In addition, Plaintiff specifically waives and releases defendant Spectrum from any claims arising from the acts alleged in its Notice to Spectrum dated June 22, 2007, alleging violations of Proposition 65 arising from the sale and distribution of a product containing the chemical known as "fluazifop butyl" (CAS No. 6980-60-54). Plaintiff and defendant Spectrum agree that the product identified in that Notice does not contain fluazifop butyl, but rather contains fluazifop-p-butyl (CAS No. 79241-46-6), which is not listed under Proposition 65.

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 Chemicals.

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 Plaintiffs' Notices and/or the Action regarding Covered Products, except as set forth herein. No claim is reserved as between the Parties hereto, and each Party 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 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, and also includes their corporate affiliates, including any and all corporate parents and subsidiaries and their directors, officers, agents, attorneys, representatives, employees, licensors, heirs, predecessors, successors, and assigns, their suppliers, distributors and customers of any Covered Products that contain the Covered Chemicals, and any other customers of such suppliers of the Covered Chemicals, provided that such customers identify themselves to Plaintiff within sixty days following the approval of this Agreement, and agree to include on the label(s) for the Covered Products the use instructions described at paragraph 2.

5. MODIFICATION OF CONSENT JUDGMENT

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

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

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

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

5.5 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. NECESSITY OF BANKRUPTCY COURT APPROVAL AS TO SPECTRUM

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

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

7. ENFORCEMENT OF CONSENT JUDGMENT

7.1 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.

7.2 The Parties may enforce the terms and conditions of this Consent Judgment pursuant to paragraph 7.1 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.

8. GOVERNING LAW

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

8.2 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.

9. 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 he 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.

10. 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
3700 Wilshire Boulevard, Suite 480
Los Angeles, California 90010

For Defendants Bayer, Spectrum and Waterbury:

McKenna Long & Aldridge LLP
Attn: Stanley W. Landfair
101 California Street, Suite 4100
San Francisco, California 94111

For Defendant Central Garden and Affiliates:

Wendel Rosen Black & Dean LLP
Attn: Daniel Rapaport
1111 Broadway, 24th Floor
Oakland, California 94067

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

11. 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.* § 3004 to/on the California Attorney General's Office.

12. 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.

13. 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.

IT IS SO STIPULATED:

Dated: _____

CONSUMER ADVOCACY GROUP, INC.

Lyn H Marcus
(Signature)

Lyn H Marcus
(Name)

President
(Title)

Dated: August 6, 2009

BAYER CORPORATION

Gary D. McConnell
(Signature)

GARY D. MCCONNELL
(Name)

Vice President and Associate
(Title) General Counsel

Dated: 07/31/09

KR

BAYER CROPSCIENCE LP

Jacqueline M Applegate
(Signature)

Jacqueline M. Applegate
(Name)

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

Dated: _____

CENTRAL GARDEN & PET COMPANY, INC.

_____
(Signature)

_____
(Name)

_____
(Title)

Dated: _____

FARNAM COMPANIES, INC.

_____
(Signature)

_____
(Name)

_____
(Title)

Dated: _____

BAYER CROPSCIENCE LP

_____
(Signature)

_____
(Name)

_____
(Title)

Dated: JULY 20, 2009

CENTRAL GARDEN & PET COMPANY, INC.

Stuart W. Booth
(Signature)

STUART W. BOOTH
(Name)

EVP, CFO & SECRETARY
(Title)

Dated: JULY 20, 2009

FARNAM COMPANIES, INC.

Stuart W. Booth
(Signature)

STUART W. BOOTH
(Name)

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

Dated: JULY 20, 2009

FOUR PAWS PRODUCTS, LTD.

Stuart W. Booth
(Signature)

STUART W. BOOTH
(Name)

V.P., CFO & SECRETARY
(Title)

Dated: JULY 20, 2009

GRANT LABORATORIES, INC.

Stuart W. Booth
(Signature)

STUART W. BOOTH
(Name)

V.P., CFO & SECRETARY
(Title)

Dated: JULY 20, 2009

PENNINGTON SEED, INC.

Stuart W. Booth
(Signature)

STUART W. BOOTH
(Name)

EVP, CFO, TREASURER & SECRETARY
(Title)

Dated: _____

SPECTRUM BRANDS, INC.

_____
(Signature)

John T. Wilson
(Name)

Vice President, Secretary, Gen. Counsel
(Title)

Dated: _____

UNITED INDUSTRIES CORPORATION

_____
(Signature)

Michael G. Pfefferkorn
(Name)

Division General Counsel & Secretary
(Title)

Dated: _____

WATERBURY COMPANIES, INC.

_____
(Signature)

_____
(Name)

_____
(Title)

Dated: _____

SPECTRUM BRANDS, INC.

_____
(Signature)

_____
(Name)

_____
(Title)

Dated: _____

UNITED INDUSTRIES CORPORATION

_____
(Signature)

_____
(Name)

_____
(Title)

Dated: July 25, 2019

WATERBURY COMPANIES, INC.

T K
(Signature)

TED KOSTECKI
(Name)

VP - CFO
(Title)

Dated: JULY 20, 2009

EXCEL MARKETING

Stuart W Booth
(Signature)

STUART W. BOOTH
(Name)

EVP, CFO & SECRETARY
(Title)

Dated: JULY 20, 2009

GULFSTREAM HOME & GARDEN, INC.

Stuart W Booth
(Signature)

STUART W. BOOTH
(Name)

TREASURER, CFO & SECRETARY
(Title)

Dated: JULY 20, 2009

WELLMARK INTERNATIONAL, INC.

Stuart W Booth
(Signature)

STUART W. BOOTH
(Name)

V.P.-FINANCE & SECRETARY
(Title)

APPROVED AS TO FORM:

Dated: July 15/09

REUBEN YEROUSHALMI

COUNSEL FOR PLAINTIFF CONSUMER ADVOCACY GROUP, INC.

Dated: _____

STANLEY W. LANDFAIR

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

Dated: _____

DANIEL RAPAPORT

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

IT IS SO ORDERED:

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

Dated: _____

JUDGE OF THE SUPERIOR COURT

014176.0036\1292342.1

Dated: July 15, 09

REUBEN YEROUSHALMI

COUNSEL FOR PLAINTIFF CONSUMER ADVOCACY GROUP, INC.

Dated: _____

STANLEY W. LANDFAIR

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

Dated: _____

DANIEL RAPAPORT

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

IT IS SO ORDERED:

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

Dated: _____

JUDGE OF THE SUPERIOR COURT

014176.0036\1292342.1

Dated: _____

REUBEN YEROUSHALMI

COUNSEL FOR PLAINTIFF CONSUMER ADVOCACY GROUP, INC.

Dated: Aug. 16, 2004

STANLEY W. LANDFAIR

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

Dated: _____

DANIEL RAPAPORT

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

IT IS SO ORDERED:

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

Dated: _____

JUDGE OF THE SUPERIOR COURT

SF:27358753.1

PROOF OF SERVICE

At the time of service, I was 18 years of age and **not a party to this action.** I am employed in the County of Los Angeles, State of California. My business address is 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010.

On August 17, 2009, I served true copies of the following document(s):

[PROPOSED] CONSENT JUDGMENT

on the interested parties by placing ( ) the original (X) a true and correct copy thereof in sealed envelope(s) addressed as follows:

Daniel Rapaport, Esq.
WENDEL, ROSEN, BLACK & DEAN LLP
111 Broadway, 24th Floor
Oakland, CA 94607
Telephone No.(510) 834-6600
Facsimile No. (510) 834-1928

Attention: Proposition 65 Coordinator
OFFICE OF THE ATTORNEY GENERAL OF CALIFORNIA
Post Office Box 70550
Oakland, CA 94612-0550

Standley Landfair, Esq.
McKENNA, LONG & ALDRIDGE, LLP
101 California Street, 41st Floor
San Francisco, CA 94111
Telephone No. (415) 267-4000
Facsimile No. (415) 267-4198

__X__ BY MAIL: I enclosed the documents(s) in a sealed envelope addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, the envelope was deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

___ VIA OVERNIGHT COURIER: I caused each envelope to be delivered via overnight mail by I caused the above –referenced documents(s) to be delivered to ☐ UPS ☐ FED-EX, an overnight courier service, for delivery to the above addressee(s) [CCP§1013(c), 2015.5].

___ BY FACSIMILE: by transmitting a true copy by facsimile to the person(s) and facsimile number(s) listed above and/or on the attached service list :

//

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

Executed this 17th day of August, 2009, at Los Angeles, California.

Suzana Solis