

1 Reuben Yeroushalmi (SBN 193981)
Albert Lum (SBN 2590530)
2 **YEROUSHALMI & ASSOCIATES**
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3 Beverly Hills, CA 90212
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4 Facsimile: (310) 623-1930

5 Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF LOS ANGELES

9 CONSUMER ADVOCACY GROUP, INC., in
the public interest,

10 Plaintiff,

11 v.

12 GROW MORE, INC., a California
13 corporation; INTERNATIONAL GARDEN
CENTER, INC., a California corporation; and
14 DOES 1-20;

15 Defendants.
16

CASE NO. BC427434

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: December 4, 2009

TRIAL DATE:

TIME:

17
18 **1. INTRODUCTION**

19 1.1 On December 4, 2009, plaintiff, the Consumer Advocacy Group, Inc. ("CAG"), a
20 non-profit corporation, filed a complaint in the Los Angeles Superior Court entitled *Consumer*
21 *Advocacy Group, Inc. v. Grow More Inc.*, Case No. BC 427434 (the "Action") for civil penalties
22 and injunctive relief pursuant to the provisions of California Health & Safety Code § 25249.5, *et*
23 *seq.* ("Proposition 65"). CAG's Complaint named Grow More, Inc. and International Garden
24 Center, Inc. as defendants (defendants hereinafter referred to collectively as "Defendants").

25 1.2 Grow More, Inc. is a corporation that employs 10 or more persons. International
26 Garden Center, Inc. is a corporation that employs 10 or more persons. Defendant Grow More, Inc.
27 manufactured, distributed, promoted, or sold Grow More Research Farms Diatomaceous Earth
28 (hereinafter referred to as the "Product"). Defendant International Garden Center, Inc. sold the

1 Product. CAG alleges that the Product contains Crystalline Silica, a chemical known to the State
2 of California to cause cancer.

3 1.3 On or about December 7, 2008, CAG served Defendants and the appropriate public
4 enforcement agencies with notice claiming that Defendants were in violation of Proposition 65 in
5 regard to the Product. CAG's notices and the Complaint in this Action allege that Defendants
6 expose people to Crystalline Silica without first providing clear and reasonable warnings, in
7 violation of California Health & Safety Code § 25249.6.

8 1.4 Defendants deny the material allegations of the notices and the Complaint, and
9 deny liability for the cause of action alleged in the Complaint and in connection with the Action.

10 1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court has
11 jurisdiction over the allegations of violations contained in CAG's Complaint and personal
12 jurisdiction over Defendants as to the acts alleged in CAG's Complaint, that venue is proper in the
13 County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a
14 full and final resolution of all claims which were or could have been raised in the Action and
15 Complaint based on the facts alleged therein.

16 1.6 The parties enter into this Consent Judgment pursuant to a settlement of certain
17 disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and costly
18 litigation, including without limitation the expenditure of significant funds by Defendants for
19 scientific analysis and related proceedings before the Office of Environmental Hazard Assessment
20 and/or the courts related to the Product, and similar expenditures by CAG to oppose such analysis
21 and proceedings.

22 1.7 Nothing in this Consent Judgment shall be construed as an admission by the parties
23 of any fact, conclusion of law, issue of law or violation of law, including without limitation, any
24 admission concerning any violation of Proposition 65 or any other statutory, regulatory, common
25 law, or equitable doctrine, or the meaning of the terms "knowingly and intentionally expose" or
26 "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this
27 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission
28 by the parties of any fact, conclusion of law, issue of law, or violation of law, or of fault,

1 wrongdoing, or liability by Grow More, Inc., its' officers, directors, employees, or parent,
2 subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or
3 judicial proceeding or litigation in any court, agency, or forum. Nothing in this Consent Judgment,
4 nor compliance with its terms, shall constitute or be construed as an admission by the parties of
5 any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability
6 by International Garden Center, Inc., its' officers, directors, employees, or parent, subsidiary or
7 affiliated corporations, or be offered or admitted as evidence in any administrative or judicial
8 proceeding or litigation in any court, agency, or forum.

9 1.8 Nothing in this Consent Judgment shall prejudice, waive or impair any right,
10 remedy, argument, or defense the parties may have in any other or future legal proceeding, except
11 as expressly provided in this Consent Judgment.

12 1.9 This Consent Judgment is the product of negotiation and compromise and is
13 accepted by the parties, for purposes of settling, compromising and resolving issues disputed in
14 this action, including future compliance by Defendants with Section 2 of this Consent Judgment,
15 and shall not be used for any other purpose, or in any other matter.

16 **2. PROPOSITION 65 COMPLIANCE – STOP SALES AND/OR WARNING**
17 **LABELS**

18 2.1 Upon the execution of this Consent Judgment and its submission to the Attorney
19 General's Office and approval, Defendants agree, promise, and represent that after receipt of the
20 notice, they ceased and will continue to cease all California distribution and/or sales of the
21 product.

22 2.2 Upon the execution of this Consent Judgment and its submission to the Attorney
23 General's Office and approval by the Court, as provided herein below, if Defendants decide to
24 resume distribution, and/or sales of the Product, Defendants shall provide Proposition 65
25 compliant warnings on all containers of the Products sold or distributed in California indicating
26 that the Product contains a chemical designated by the State to cause Cancer. Within sixty (60)
27 days of approval of this Consent Judgment by the Court, Defendants shall not engage in any
28 California sale of the Product without providing a warning label with the following language, or

1 substantially similar language:

2 **WARNING: This product contains a chemical known to the State of**
3 **California to cause Cancer.**

4 **3. SETTLEMENT PAYMENT**

5 3.1 Within ten (10) days of entry of this Consent Judgment by the
6 Court, Defendants shall pay a total of twenty-five thousand dollars (\$25, 000) to Yeroushalmi &
7 Associates, CAG’s attorneys, for reasonable investigation fees and costs, attorneys’ fees, and any
8 other costs incurred as a result of investigating, bringing this matter to Defendants’ attention,
9 litigating, and negotiating a settlement in the public interest.

10 **4. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

11 4.1 This written Stipulated Consent Judgment may only be modified by written
12 agreement of CAG and Defendants upon stipulation and Order of the Court, or after noticed
13 motion, and upon entry of a Consent Judgment by the Court thereon, or upon motion of CAG or
14 Defendants as provided by law and upon entry of a modified Stipulated Consent Judgment by the
15 Court.

16 **5. ENFORCEMENT OF CONSENT JUDGMENT**

17 5.1 Any party may, by motion or application for an order to show cause
18 before the Superior Court of the County of Los Angeles, consistent with the terms and conditions
19 set forth in paragraphs 9.1 and 9.2 of this Consent Judgment, enforce the terms and conditions
20 contained in this Consent Judgment. The prevailing party shall be entitled to its reasonable
21 attorneys’ fees and costs associated with such motion or application.

22 **6. APPLICATION OF CONSENT JUDGMENT**

23 6.1 This Consent Judgment shall apply to and be binding upon the
24 parties hereto, their divisions, subdivisions and subsidiaries, officers, directors, employees, agents
25 and their successors or assigns, and to the extent allowed by law, on the general public.

26 **7. CLAIMS COVERED AND RELEASED**

27 7.1 CAG, on behalf of itself and in the public interest, hereby releases and
28 discharges Defendants, their related affiliates, customers, retailers, distributors, other entities in

1 their distribution chain down to the consumer of the Product, predecessors, successors and assigns,
2 and all officers, directors, employees, and shareholders of them (collectively, "Released Parties")
3 from any and all claims asserted, or that could have been asserted, in this litigation arising from
4 the alleged failure to provide Proposition 65 warnings for the Product regarding the exposure of
5 individuals to a Listed Chemical in the Product. CAG, on behalf of itself only, hereby releases and
6 discharges the Released Parties from any and all known and unknown past, present, and future
7 rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory
8 relief, and attorney fees, costs, and expenses related to or arising out of the facts and claims
9 asserted, or that could have been asserted, under state or federal law in this litigation arising from
10 or related to the Product or the facts alleged in Plaintiff's Proposition 65 Notices or the Complaint,
11 including without limitation any and all claims concerning exposure of any person to Proposition
12 65-listed chemicals in the Product. Compliance with the terms of this Consent Judgment shall
13 constitute compliance by the Released Parties with Proposition 65 with respect to exposures to
14 Crystalline Silica contained in the Product. This release does not limit or affect the obligations of
15 any party created under this Consent Judgment.

16 7.2 Unknown Claims. It is possible that other injuries, damages, liability, or
17 claims not now known to the Parties arising out of the facts alleged in the Complaint and relating
18 to the Products will develop or be discovered, and this Consent Judgment is expressly intended to
19 cover and include all such injuries, damages, liability, and claims, including all rights of action
20 therefor. CAG has full knowledge of the contents of Section 1542 of the Civil Code. CAG, on
21 behalf of itself only, acknowledges that the claims released in section 7.1 above may include
22 unknown claims and waives Section 1542 as to any such unknown claims. Section 1542 reads as
23 follows:

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

27 CAG acknowledges and understands the significance and consequences of this specific waiver of
28 Civil Code Section 1542.

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8. SEVERABILITY

8.1 In the event that any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

9. NOTICE AND CURE

9.1 No action to enforce this Consent Judgment may be commenced, and no notice of violation related to the Product may be served or filed against Grow More, Inc. nor International Garden Center, Inc. by CAG, unless the party seeking enforcement or alleging violation notifies the other party of the specific acts alleged to breach this Consent Judgment at least 90 days before serving or filing any motion, action, or Notice of Violation. Any notice to Defendants must contain (a) the name of the product, (b) specific dates when the product was sold in California without the warning specified in Section 2, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

9.2 Within 30 days of receiving the notice described in Section 9.1, Defendants shall either (1) withdraw the product, (2) provide for the product the warning described in Section 2, or (3) refute the information provided under Section 9.1. Should the parties be unable to resolve the dispute, any party may seek relief under Section 5.

10. GOVERNING LAW

10.1 The terms of this Consent Judgment shall be governed by the laws of the State of California.

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11. PROVISION OF NOTICE

11.1 All notices required pursuant to this Consent Judgment and correspondence shall be sent to the following:

For Consumer Advocacy Group, Inc.:

Reuben Yeroushalmi
YEROUSHALMI & ASSOCIATES
9100 Wilshire Boulevard, Suite 610 E.
Beverly Hills, CA 90212
Facsimile No: (310) 623-1930

For Grow More, Inc.:

Todd Hunt, Esquire
SEYFARTH SHAW, LLP
2029 Century Park E. Suite 3500
Los Angeles, CA 90067
Facsimile No: (310) 282-6907

For International Garden Center, Inc.:

Charles H. Pomeroy
MCKENNA LONG & ALDRIDGE LLP
300 S. Grand Avenue, 14th Floor
Los Angeles, CA 90071
Facsimile No: (213) 243-6256

Jeremy Smith
THE GUZMAN LAW GROUP, PC
Manhattan Towers
1230 Rosecrans Avenue, Suite 650
Manhattan Beach, CA 90266
Facsimile No: (310) 321-6641

12. COURT APPROVAL

12.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be of no further force or effect.

12.2 CAG shall comply with Health and Safety Code section 25249.7(f) and with Title 11 California Code of Regulations section 3003.

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2 **13. EXECUTION AND COUNTER PARTS**

3 13.1 This Stipulated Consent Judgment may be executed in counterparts and by
4 means of facsimile, which taken together shall be deemed to constitute one document. A facsimile
5 of PDF signatures shall be construed as valid as the original.

6 **14. AUTHORIZATION**

7 14.1 Each signer of this Stipulated Consent Judgment certifies that he or she is
8 fully authorized by the party he or she represents to stipulate to the terms and conditions of this
9 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on
10 behalf of the party represented and legally bind that party. The undersigned have read, understand
11 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as
12 explicitly provided herein, each party is to bear its own fees and costs.

13
14 CONSUMER ADVOCACY GROUP, INC.

15
16 _____
Lyn Marcus, President

Dated: _____

17
18 GROW MORE, INC.

19
20 _____
21 *John Arwill* .President

Dated: *June 22, 10*

22
23 INTERNATIONAL GARDEN CENTER,
24 INC.

25 _____
President

Dated: _____

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13
14 CONSUMER ADVOCACY GROUP, INC.

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16 _____
17 Lyn Marcus, President

Dated: _____

18
19 GROW MORE, INC.

20
21 _____, President

Dated: _____

22
23 INTERNATIONAL GARDEN CENTER,
24 INC.

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Richard Soria, President

Dated: 6/29/10

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CONSUMER ADVOCACY GROUP, INC.

Lyn Marcus
Lyn Marcus, President

Dated: June 30, 2010

GROW MORE, INC.

Jan Aruill
Jan Aruill, President

Dated: June 27, 10

INTERNATIONAL GARDEN CENTER, INC.

President

Dated: _____

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ORDER AND JUDGMENT

3 Based upon the stipulated Stipulated Consent Judgment between Consumer Advocacy Group, Inc.
4 and Defendants., the consent judgment is approved and judgment is hereby entered according to
5 the terms herein.

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7 Dated: _____, 2010

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Judge, Superior Court of the State of California

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