

1 REUBEN YEROUSHALMI (SBN 193981)  
2 DANIEL D. CHO (SBN 105409)  
3 BEN YEROUSHALMI (SBN 232540)  
4 YEROUSHALMI & ASSOCIATES  
5 9100 Wilshire Blvd., Suite 610E  
6 Beverly Hills, CA 90212  
7 Telephone: (310) 623-1926  
8 Facsimile: (310) 623-1930

9 Attorneys for Plaintiff,  
10 CONSUMER ADVOCACY GROUP, INC.

11 COX, CASTLE & NICHOLSON LLP  
12 STUART I. BLOCK, (SBN 160688)  
13 555 California Street, 10<sup>th</sup> Floor  
14 San Francisco, CA 94101  
15 Telephone: (415) 392-4200  
16 Facsimile: (415) 392-4250  
17 [sblock@coxcastle.com](mailto:sblock@coxcastle.com)

18 Attorneys for Defendant  
19 ST. GABRIEL ORGANICS, LLC

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 COUNTY OF SAN FRANCISCO

22 CONSUMER ADVOCACY GROUP, INC.,  
23 in the public interest,  
24 Plaintiff,  
25  
26 v.  
27 ST. GABRIEL ORGANICS, LLC a Virginia  
28 limited liability company; and DOES 1-20;  
Defendants.

**CASE NO. CGC-09-495033**

**[PROPOSED] STIPULATED  
CONSENT JUDGMENT**

Complaint filed: December 7, 2009

1 **1.0 INTRODUCTION**

2 1.1 Plaintiff. Plaintiff Consumer Advocacy Group, Inc. (“Plaintiff” or “CAG”), on its  
3 own behalf and as a representative of the People of the State of California, is a non-profit public  
4 interest corporation.

5 1.2 Defendant. St. Gabriel Organics, LLC (“St. Gabriel”) distributes natural and  
6 organic lawn care and household products nationally, including to customers in California.

7 1.3 Parties. CAG and St. Gabriel are collectively referred to herein as the “Parties.”

8 1.4 Proposition 65. Health & Safety Code sections 25249.5 *et seq.* (“Proposition  
9 65”) prohibits, among other things, a company consisting of ten or more employees from  
10 knowingly and intentionally exposing an individual to chemicals that are known to the State of  
11 California to cause cancer and/or birth defects or other reproductive harm without first providing  
12 a clear and reasonable warning to such individuals. Exposures can occur as a result of a  
13 consumer product exposure, an occupational exposure or an environmental exposure.

14 1.5 Proposition 65 Chemicals. The State of California has officially listed various  
15 chemicals pursuant to Health & Safety Code section 25249.8 as chemicals known to the State of  
16 California to cause cancer and/or reproductive toxicity.

17 1.6 The Present Dispute. This Consent Judgment pertains to *Consumer Advocacy*  
18 *Group, Inc. v. St. Gabriel Organics, LLC, et al.*, San Francisco Superior Court Case No. CGC-  
19 09-495033 (the “Action”), which was filed on December 9, 2009

20 1.7 Plaintiff’s 60-day Notice. More than sixty days prior to filing the Action, CAG  
21 served on St. Gabriel a document entitled “60-day Notice of Intent to Sue Under Health & Safety  
22 Code section 25249.6 (the “Notice”). A true and correct copy of the Notice is attached hereto as  
23 Exhibit “A.” The Notice stated, among other things, that Plaintiff believed that St. Gabriel  
24 violated Proposition 65 by knowingly and intentionally exposing consumers, and employees, as  
25 well as the public, to certain Proposition 65 listed chemicals in connection with its sale of  
26 diatomaceous earth (“DE”). Among the Proposition 65 noticed chemicals was crystalline silica  
27 (collectively “Noticed Chemicals”). This Consent Judgment covers only those specified Noticed  
28

1 Chemicals. CAG subsequently filed the Action against St. Gabriel. The Action asserts the  
2 Proposition 65 violation alleged in the Notice.

3           1.8 Purpose of Consent Judgment. The Parties enter into this Consent Judgment  
4 pursuant to a settlement of certain disputed claims as alleged in the Complaint for the purpose of  
5 avoiding prolonged and costly litigation . The Parties wish to resolve completely and finally the  
6 issues raised by the Notice and the Action pursuant to the terms and conditions described herein.  
7 In entering into this Consent Judgment, the Parties recognize that this Consent Judgment is a full  
8 and final settlement of all claims related to Noticed Chemicals (and their constituent chemicals)  
9 that were raised or that could have been raised in the Notice and the Action. CAG and St.  
10 Gabriel also intend for this Consent Judgment to provide, to the maximum extent permitted by  
11 law, *res judicata* and/or collateral estoppel protection for St. Gabriel, against any and all other  
12 claims based upon the same or similar allegations as to the Noticed Chemicals.

13           1.9 No Admission. Nothing in this Consent Judgment shall be construed as an  
14 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall  
15 compliance with the Consent Judgment constitute or be construed as an admission by the Parties  
16 of any fact, conclusion of law, issue of law, or violation of law. St. Gabriel specifically denies  
17 that diatomaceous earth is subject to regulation under Proposition 65 or that DE requires any  
18 warning pursuant to Proposition 65.

19           1.10 Effective Upon Final Determination. St. Gabriel's willingness to enter into this  
20 Consent Judgment is based upon the understanding that this Consent Judgment will fully and  
21 finally resolve all claims related to the Noticed Chemicals (and their constituent chemicals)  
22 brought by CAG, that this Consent Judgment will have *res judicata* and/or collateral estoppel  
23 effect to the extent allowed by law with regard to any alleged violations of Proposition 65 by St.  
24 Gabriel, and that compliance with the requirements of Section 3.0 below will be deemed to  
25 satisfy any requirements of Proposition 65 related to the future sale of DE.

1 **2.0 JURISDICTION**

2 2.1 Subject Matter Jurisdiction. For purposes of this Consent Judgment only, the  
3 Parties stipulate that this Court has jurisdiction over the allegations and claims alleged in the  
4 Action.

5 2.2 Personal Jurisdiction. For purposes of this Consent Judgment only, the Parties  
6 stipulate that this Court has personal jurisdiction over St. Gabriel as to the acts and claims  
7 alleged in the Action.

8 2.3 Venue. For purposes of this Consent Judgment only, the Parties stipulate that  
9 venue for resolution of the allegations and claims asserted in the Action is proper in the County  
10 of San Francisco.

11 2.4 Jurisdiction to Enter Consent Judgment. The Parties stipulate and agree that this  
12 Court has jurisdiction to enter this Consent Judgment as a full and final settlement and resolution  
13 of the allegations contained in the Notice, the Action, and of all claims that were or that could  
14 have been raised based on the facts alleged therein or arising therefrom.

15 **3.0 COMPLIANCE**

16 3.1 Sale of DE in California. Within sixty (60) days following approval of this  
17 Consent Judgment by the Court, St. Gabriel agrees that it will not sell DE to or within California,  
18 except as set forth below.

19 3.2 Warnings. If St. Gabriel elects to resume distribution and/or sale of DE in  
20 California following the period set forth in Section 3.1 above, St. Gabriel shall provide  
21 Proposition 65 compliant warnings indicating that the product contains a chemical designated by  
22 the State of California to cause cancer. The warning shall contain the following, or substantially  
23 similar, language: **WARNING: This product contains a chemical known to the State of**  
24 **California to cause cancer.** The warning shall be provided with such conspicuousness, as  
25 compared with other words, statements, designs, or devices as to render the warnings likely to be  
26 read and understood by an ordinary individual under customary conditions of purchase or use. A  
27 label placed on the product that meets the above criteria shall be deemed to satisfy St. Gabriel's  
28 warning obligations under this Section 3.0. In lieu of providing the above warning, St. Gabriel

1 shall be entitled to use any Proposition 65 warning method now or in the future approved by a  
2 court of competent jurisdiction for DE or DE-containing products for lawn care or household use,  
3 and St. Gabriel's use of any such warning method shall be deemed to fully satisfy St. Gabriel's  
4 obligations under Proposition 65 with respect to any exposures and potential exposures to the  
5 Noticed Chemicals in all respects and to all persons and entities, including any warning  
6 requirements under this Consent Decree.

7       3.3 Safe Use or Other Determination. In the event that a court of competent  
8 jurisdiction or the State of California now or in the future determines that no Proposition 65  
9 warning is required in connection with the sale or use of DE or DE-containing lawn care or  
10 household products, including, without limitation, (a) a finding that amorphous silica as  
11 contained in DE is not a Listed Chemical and does not require a warning under Proposition 65,  
12 and/or (b) a Safe Use Determination for DE or DE-containing products for lawn care or  
13 household use from California's Office of Environmental Health Hazard Assessment, then  
14 notwithstanding Sections 3.1 and 3.2 above, upon 30-days prior written notice to Plaintiff, St.  
15 Gabriel shall be entitled to sell DE to or within California without a Proposition 65 warning. If  
16 Plaintiff does not agree with or accept St. Gabriel's notice pursuant to this Section 3.3, it may  
17 initiate dispute resolution proceedings under Section 7 below.

18       3.4 Compliance. Compliance with Sections 3.1 and 3.2 is deemed to fully satisfy St.  
19 Gabriel's obligations under Proposition 65 with respect to any exposures and potential exposures  
20 to the Noticed Chemicals in all respects and to all persons and entities.

21       3.5 Future Laws or Regulations. In lieu of complying with the requirements of  
22 Sections 3.1 and 3.2, should (a) any future federal law or regulation that governs the warnings  
23 provided for herein preempt state authority with respect to said warning; (b) any future warning  
24 requirement with respect to the subject matter of said paragraphs be proposed by any industry  
25 association and approved by the State of California; or (c) any future state law or regulation  
26 specify a specific warning for consumer exposure with respect to the subject matter of said  
27 paragraphs, St. Gabriel may comply with the warning obligations set forth in Sections 3.1 and 3.2  
28

1 by complying with such future federal or state law or regulation or such future warning  
2 requirement upon notice to Plaintiff.

3       3.6 Amendment of Proposition 65. If a statutory, regulatory or other amendment to  
4 Proposition 65 is adopted that would exempt St. Gabriel, the Released Parties (as defined in  
5 Section 4.2 below), or the class to which St. Gabriel belongs, from providing the warnings  
6 described herein, then upon the adoption of such statutory amendment or regulation and to the  
7 extent authorized by such statutory amendment or regulation, St. Gabriel shall be relieved from  
8 its obligation to provide the warnings set forth herein. In addition, should St. Gabriel cease to  
9 own or operate and/or manage any of the Covered Properties, then St. Gabriel shall be relieved of  
10 any obligation to provide warnings with respect to such Covered Properties.

11       3.7 Alleged Noncompliance. In the event that Plaintiff or any other person or entity  
12 alleges that any St. Gabriel is out of compliance or has materially failed to comply with the terms  
13 of this Consent Judgment, then such person or entity shall notify St. Gabriel of such alleged non-  
14 compliance in writing pursuant to Section 8.0 below. The notice shall include a specific  
15 description of the location(s) and basis of the alleged non-compliance. St. Gabriel shall have  
16 twenty-one (21) days following receipt of the notice to: (a) cure the alleged non-compliance and  
17 to provide reasonable evidence of such cure to Plaintiff or such other person or entity, or (b)  
18 describe, in writing, the bases upon which St. Gabriel believes that it is in full compliance with  
19 the Consent Judgment. If Plaintiff does not agree with or accept St. Gabriel response under (b)  
20 above, it may initiate dispute resolution proceedings under Section 7 below. In the event that St.  
21 Gabriel presents reasonable evidence of a cure to the notifying party within the above 21-day  
22 period, then St. Gabriel shall be deemed to be in compliance with this Consent Judgment and  
23 there shall be no further action, claims or obligations in connection with the alleged non-  
24 compliance. If Plaintiff believes in good faith that the alleged non-compliance is continuing  
25 notwithstanding the notice, St. Gabriel response, and the expiration of the above right to cure  
26 period, then Plaintiff may, by motion or order to show cause before the Superior Court of  
27 Alameda, seek to enforce the terms and conditions of this Consent Judgment.

28

1 **4.0 RELEASES AND CLAIMS COVERED**

2 4.1 Effect of Judgment. This Consent Judgment is a full and final judgment with  
3 respect to any claims regarding the Noticed Chemicals that were asserted or that could have been  
4 asserted in the Action and/or the Notice against the Released Parties (as defined in Section 4.2  
5 below), including, but not limited to: (a) claims for any violation of Proposition 65 by the  
6 Released Parties and each of them, including but not limited to, claims arising from consumer  
7 product, occupational and/or environmental exposures to the Noticed Chemicals, wherever  
8 occurring and to whomever occurring, through and including the date upon which this Consent  
9 Judgment becomes final, including all appeals; and (b) the Released Parties' continuing  
10 responsibility to provide any warnings mandated by Proposition 65 with respect to the Noticed  
11 Chemicals.

12 4.2 Release. Except for such rights and obligations as have been created under this  
13 Consent Judgment, Plaintiff, on its own behalf and in the interests of the public pursuant to  
14 Health & Safety Code section 25249.7(d), and Plaintiff's counsel, Yeroushalmi & Associates,  
15 with respect to the matters regarding the Noticed Chemicals alleged in the Notice and the Action,  
16 do hereby fully, completely, finally and forever release, relinquish and discharge: (a) St. Gabriel  
17 Organics, LLC, St. Gabriel Laboratories, LLC and Reuter Laboratories; (b) St. Gabriel's past,  
18 present, and future owners, managers, wholesalers, distributors, retailers, suppliers, and  
19 operators; and (c) the respective past, present, and future officers, directors, shareholders,  
20 affiliates, members, joint venturers, partners, agents, investors, principals, employees, lenders,  
21 attorneys, parents, subsidiaries, owners, sisters or other related entities, successors, and assigns of  
22 the persons and entities described in (a) and (b) above, and each of them (the parties identified in  
23 (a), (b), and (c) above are collectively referred to as the "Released Parties") of and from all  
24 claims, actions, causes of action, suits, demands, rights, debts, agreements, promises, liabilities,  
25 damages, penalties, royalties, fees, accountings, costs and expenses, whether known or unknown,  
26 suspected or unsuspected, of any nature whatsoever that Plaintiff has or may have against the  
27 Released Parties, arising directly or indirectly out of any fact or circumstance occurring prior to  
28 the date upon which this Consent Judgment becomes final (including all appeals), relating to any

1 actual or alleged violation of Proposition 65 by the Released Parties and their respective agents,  
2 servants and employees that were or could have been raised in the Notice and/or the Action (the  
3 “Released Claims”). In sum, the Released Claims include all allegations made, or that could  
4 have been made, by Plaintiff with respect to the Noticed Chemicals relating to Proposition 65  
5 and/or the alleged actions or inactions underlying the alleged violations.

6 4.3 Intent of Parties. It is the intention of the Parties to this Release that, upon entry  
7 of judgment and conclusion of any and all appeals or litigation relating to this Consent Judgment,  
8 that this Consent Judgment shall be effective as a full and final accord and satisfaction and  
9 release of each and every Released Claim. In furtherance of this intention, Plaintiff  
10 acknowledges that it is familiar with California Civil Code section 1542, which provides as  
11 follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
13 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING  
15 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
16 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
17 WITH THE DEBTOR.

18 Plaintiff waives and relinquishes all of the rights and benefits that Plaintiff has or may  
19 have under Civil Code section 1542 (as well as any similar rights and benefits which it may have  
20 by virtue of any statute or rule of law in any other state or territory of the United States). Plaintiff  
21 acknowledges that it may hereafter discover facts in addition to, or different from, those which it  
22 now knows or believes to be true with respect to the subject matter of this Consent Judgment and  
23 the Released Claims, and that notwithstanding the foregoing, it is Plaintiff’s intention to fully,  
24 finally, completely and forever settle and release all Released Claims, and that in furtherance of  
25 such intention, the release here given shall be and remain in effect as a full and complete general  
26 release, notwithstanding the discovery or existence of any such additional or different facts.

27 4.4 Plaintiff’s Ability to Represent the Public. Plaintiff hereby warrants and  
28 represents to Defendants and the Released Parties that (a) Plaintiff has not previously assigned



1 any Released Claim; and (b) Plaintiff has the right, ability and power to release each Released  
2 Claim.

3 Plaintiff further represents and warrants that it is a public benefit corporation formed for  
4 the specific purposes of (a) protecting and educating the public as to harmful products and  
5 activities; (b) encouraging members of the public to become involved in issues affecting the  
6 environment and the enforcement of environmental statutes and regulations including, but not  
7 limited to, Proposition 65; and (c) instituting litigation to enforce the provisions of Proposition  
8 65.

9 4.5 No Further Force and Effect. In the event that (a) the Court denies the Parties'  
10 Joint Motion to Approve the Consent Judgment pursuant to Health & Safety Code section  
11 25249.7(f)(4) as amended; or (b) a decision by the Court to approve the Consent Judgment is  
12 appealed and overturned by another Court, then upon notice by any Party hereto to any other  
13 Party hereto, this Consent Judgment shall be of no further force or effect and the Parties shall be  
14 restored to their respective rights and obligations as though this Consent Judgment had not been  
15 executed by the Parties.

16 **5.0 ATTORNEY FEES AND COSTS**

17 5.1 Payment to Yeroushalmi & Associates. St. Gabriel shall pay CAG  
18 \$13,000 for its attorney fees and costs incurred in this matter. The check shall be to  
19 "Yeroushalmi & Associates." CAG represents and warrants that CAG has authorized the  
20 payment of attorney fees and costs, and that the payment and any application or distribution of  
21 such payment will not violate any agreement between CAG and its attorneys with any other  
22 person or entity. CAG releases and agrees to hold harmless the Released Parties with regard to  
23 any issue concerning the allocation or distribution of the amount paid under this Section.  
24 Yeroushalmi & Associates shall provide its address and federal tax identification number to  
25 International prior to such payment.

26 5.2 Timing of Payments. The payments described above shall be made in full  
27 to their respective recipients within ten (10) business days following entry of this Court-approved  
28 Consent Judgment.

1 **6.0 PRECLUSIVE EFFECT OF CONSENT JUDGMENT**

2 6.1 Entry of Judgment. Entry of judgment by the Court pursuant to this Consent  
3 Judgment shall, *inter alia*:

4 6.1.1 Constitute full and fair adjudication of all claims against St. Gabriel,  
5 including, but not limited to, all claims set forth in the Action based upon alleged violations of  
6 Proposition 65, as well as any other statute, provision of common law or any theory or issue  
7 which arose from St. Gabriel's actual or alleged failure to provide warnings regarding consumer  
8 exposure to the Noticed Chemicals ;

9 6.1.2 Bar all other persons, on the basis of *res judicata*, collateral estoppel  
10 and/or the doctrine of mootness, from prosecuting against any Released Party any claim with  
11 respect to the Noticed Chemicals alleged in the Notice and the Action, and based upon alleged  
12 violations of Proposition 65; or any theory or issue which arose or may arise from the alleged  
13 failure to provide warnings of exposure to any Noticed Chemicals.

14 **7.0 DISPUTES UNDER THE CONSENT JUDGMENT**

15 7.1 Disputes. In the event that a dispute arises with respect to either Party's  
16 compliance with the terms of this Consent Judgment, the Parties shall meet, either in person or  
17 by telephone, and endeavor to resolve the dispute in an amicable manner. No action may be  
18 taken to enforce the provisions of this Consent Judgment absent such a good faith effort to  
19 resolve the dispute prior to the taking of such action. In the event that legal proceedings are  
20 initiated to enforce the provisions of this Consent Judgment, however, the prevailing party in  
21 such proceeding may seek to recover its costs and reasonable attorneys' fees. As used herein, the  
22 term "prevailing party" means a party that is successful in obtaining relief more favorable to it  
23 than the relief that the other party was amenable to providing during the parties' good faith  
24 attempt to resolve the dispute that is the subject of such enforcement action.

25 **8.0 NOTICES**

26 8.1 Written Notice Required. All notices between the Parties provided for or  
27 permitted under this Consent Judgment or by law shall be in writing and shall be deemed duly  
28 served: (a) when personally delivered to a party, on the date of such delivery; or (b) when sent

1 via facsimile to a party at the facsimile number set forth below, or to such other or further  
2 facsimile number provided in any notice sent under the terms of this Section, on the date of the  
3 transmission of that facsimile; or (c) when deposited in the United States mail, certified, postage  
4 prepaid, addressed to such party at the address set forth below, or to such other or further address  
5 provided in a notice sent under the terms of this Section, three days following the deposit of such  
6 notice in the mails.

7 Notices pursuant to this Section shall be sent to the parties as follows:

8  
9 To Plaintiff:

10 Reuben Yeroushalmi  
11 Yeroushalmi & Associates  
12 3700 Wilshire Boulevard, Suite 480  
13 Los Angeles, CA 90010  
14 Facsimile Number: (213) 382-3430

15 To Defendants:

16 Robert Reuter  
17 St. Gabriel Organics, LLC  
18 14044 Litchfield Drive  
19 Orange, Virginia 22960

20 *With a copy to:*

21 Stuart I. Block, Esq.  
22 Cox, Castle & Nicholson LLP  
23 555 California Street; 10th Floor  
24 San Francisco, CA 94104  
25 Facsimile No. (415) 392-4250

26 A Party may change the address to which notice shall be provided under this Consent Judgment  
27 by serving a written notice to each of the Parties.

## 28 **9.0 INTEGRATION**

29 **9.1 Integrated Writing.** This Consent Judgment constitutes the final and complete  
30 agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior  
31 or contemporaneous negotiations, promises, covenants, agreements or representations concerning

1 any matters directly, indirectly or collaterally related to the subject matter of this Consent  
2 Judgment. The Parties hereto have expressly and intentionally included in this Consent  
3 Judgment all collateral or additional agreements that may, in any manner, touch or relate to any  
4 of the subject matter of this Consent Judgment and therefore, all promises, covenants and  
5 agreements, collateral or otherwise are included herein and therein. The Parties intend that this  
6 Consent Judgment shall constitute an integration of all their agreements, and each understands  
7 that in the event of any subsequent litigation, controversy or dispute concerning any of its terms,  
8 conditions or provisions, no Party hereto shall be permitted to offer or introduce any oral or  
9 extrinsic evidence concerning any other collateral or oral agreement between the Parties not  
10 included herein.

11 **10.0 TIMING**

12 10.1 Time of Essence. Time is of the essence in the performance of the terms hereof.

13 **11.0 COMPLIANCE WITH REPORTING REQUIREMENTS**

14 11.1 Reporting Forms: Presentation to Attorney General. The Parties expressly  
15 acknowledge and agree to comply with the reporting requirements referenced in Health & Safety  
16 Code section 25249.7(f) and regulations promulgated thereunder. Upon receipt of all necessary  
17 signatures hereto, Plaintiff shall present this Proposed Consent Judgment to the California  
18 Attorney General's office.

19 **12.0 COUNTERPARTS**

20 12.1 Counterparts. This Consent Judgment may be signed in counterparts and shall be  
21 binding upon the Parties hereto as if all of the Parties executed the original hereof. A facsimile  
22 or pdf signature shall be valid as the original.

23 **13.0 WAIVER**

24 13.1 No waiver. No waiver by any Party hereto of any provision hereof shall be  
25 deemed to be a waiver of any other provision hereof or of any subsequent breach of the same or  
26 any other provision hereof.

27  
28

1 **14.0 AMENDMENT**

2 14.1 In Writing. This Consent Judgment cannot be amended or modified except by a  
3 writing executed by the parties hereto that expresses, by its terms, an intention to modify this  
4 Consent Judgment.

5 **15.0 SUCCESSORS**

6 15.1 Binding Upon Successors. This Consent Judgment shall be binding upon and  
7 inure to the benefit of, and be enforceable by, the Parties hereto and their respective  
8 administrators, trustees, executors, personal representatives, successors and assigns.

9 **16.0 CHOICE OF LAWS**

10 16.1 California Law Applies. Any dispute regarding the interpretation of this Consent  
11 Judgment, the performance of the Parties pursuant to the terms of this Consent Judgment, or the  
12 damages accruing to a Party by reason of any breach of this Consent Judgment shall be  
13 determined under the laws of the State of California, without reference to choice of law  
14 principles.

15 **17.0 NO ADMISSIONS**

16 17.1 Settlement Cannot Be Used as Evidence. This Consent Judgment has been  
17 reached by the Parties to avoid the costs of prolonged litigation. By entering into this Consent  
18 Judgment, neither Plaintiff nor Defendants admit any issue of fact or law, including any violation  
19 of Proposition 65 or any other law. St. Gabriel specifically denies that DE contains the Noticed  
20 Chemicals, and denies that the sale, handling or use of the product for lawn care or household  
21 purposes requires a Proposition 65 warning. The settlement of claims herein is not and shall not  
22 be deemed to be an admission or concession of liability or culpability by any Party, at any time,  
23 for any purpose. Neither this Consent Judgment, nor any document referred to herein, nor any  
24 action taken to carry out this Consent Judgment, shall be construed as giving rise to any  
25 presumption or inference of admission or concession by Defendants as to any fault, wrongdoing  
26 or liability whatsoever. Neither this Consent Judgment, nor any of its terms or provisions, nor  
27 any of the negotiations or other proceedings connected with it, nor any other action taken to carry  
28 out this Consent Judgment, by any of the Parties hereto, shall be referred to, offered as evidence,

1 or received in evidence in any pending or future, civil, criminal or administrative action or  
2 proceeding, except in a proceeding to enforce this Consent Judgment, to defend against the  
3 assertion of any Released Claim or as otherwise required by law.

4 **18.0 REPRESENTATION**

5 18.1 Construction of Consent Judgment. The Parties each acknowledge and warrant  
6 that they have been represented by independent counsel of their own selection in connection with  
7 the prosecution and defense of the Action, the negotiations leading to this Consent Judgment and  
8 the drafting of this Consent Judgment; and that in interpreting this Consent Judgment, the terms  
9 of this Consent Judgment will not be construed in favor of or against any Party hereto.

10 **19.0 AUTHORIZATION**

11 19.1 Authority to Enter Consent Judgment. Each of the signatories hereto certifies that  
12 he or she is authorized by the Party he or she represents to enter into this Consent Judgment, to  
13 stipulate to this Consent Judgment, and to execute and approve this Consent Judgment on behalf  
14 of the Party represented.

15 Dated: \_\_\_\_\_, 2010

CONSUMER ADVOCACY GROUP, INC.

17 *Lyn H Marcus*  
18 By: Lyn H Marcus  
19 Its: President

20  
21 Dated: \_\_\_\_\_, 2010

ST. GABRIEL ORGANICS, LLC

22 \_\_\_\_\_  
23 By: \_\_\_\_\_  
24 Its: \_\_\_\_\_

25 **ORDER AND JUDGMENT**

1 or received in evidence in any pending or future, civil, criminal or administrative action or  
2 proceeding, except in a proceeding to enforce this Consent Judgment, to defend against the  
3 assertion of any Released Claim or as otherwise required by law.

4 **18.0 REPRESENTATION**

5 18.1 Construction of Consent Judgment. The Parties each acknowledge and warrant  
6 that they have been represented by independent counsel of their own selection in connection with  
7 the prosecution and defense of the Action, the negotiations leading to this Consent Judgment and  
8 the drafting of this Consent Judgment; and that in interpreting this Consent Judgment, the terms  
9 of this Consent Judgment will not be construed in favor of or against any Party hereto.

10 **19.0 AUTHORIZATION**

11 19.1 Authority to Enter Consent Judgment. Each of the signatories hereto certifies that  
12 he or she is authorized by the Party he or she represents to enter into this Consent Judgment, to  
13 stipulate to this Consent Judgment, and to execute and approve this Consent Judgment on behalf  
14 of the Party represented.

15 Dated: \_\_\_\_\_, 2010 CONSUMER ADVOCACY GROUP, INC.  
16  
17 By: \_\_\_\_\_  
18 Its: \_\_\_\_\_  
19

20 Dated: 7-21-2010, 2010 ST. GABRIEL ORGANICS, LLC  
21  
22 By: [Signature]  
23 Its: Vice President  
24

25 **ORDER AND JUDGMENT**

26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Based upon the stipulated Consent Judgment between Consumer Advocacy Group, Inc.  
and St. Gabriel Organics, LLC, the settlement is approved and judgment is hereby entered  
according to the terms herein.

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
Judge, Superior Court of the State of California

59562\4004508v5



# **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")

12/4/08

Mary Reuter  
St. Gabriel Labs, LLC  
14044 Litchfield Drive  
Orange, VA 22960

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

Re: **Violations of Proposition 65 concerning Insect Dust Diatomaceous Earth**

Dear Ms. Reuter:

**Consumer Advocacy Group, Inc.** ("CAG"), the noticing entity, serves this Notice of Violation ("Notice") upon Saint Gabriel Laboratories, LLC ("Violator") pursuant to and in compliance with Proposition 65. Violator 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 Violator 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. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65. CAG is a nonprofit entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices.
- 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.
- **Insect Dust Diatomaceous Earth** contains crystalline silica (airborne particles of respirable size.) Crystalline silica (airborne particles of respirable size) is a chemical known to the State to cause cancer. On October 1, 1988, which was more than twenty months before CAG served this Notice, the Governor of California added crystalline silica (airborne particles of respirable size) to the list of chemicals known to the State to cause cancer.
- This Notice addresses consumer products exposure. "A 'consumer 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. 22, § 12601(b).

Violator caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers Insect Dust Diatomaceous Earth ("Insect Dust DE"). The packaging for Insect Dust DE (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violator, pertinent to Insect Dust DE, 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 Violator, pertinent to Insect Dust DE, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof. Insect Dust DE is mainly used as for treating surfaces for various insects.

- This Notice also addresses environmental exposures. "An 'environmental 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. 22 § 12601(d).

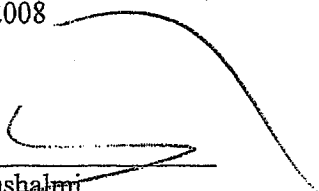
Violator caused environmental exposures by not providing any Proposition 65-compliant warnings at its facility located at 14044 Litchfield Drive Orange, VA 22960, among other locations such exposures could foreseeably take place, to persons who could foreseeably come into contact with Insect Dust DE by inhaling the silica particles through the ambient air. The environmental exposures did occur beyond the property owned or controlled by Violator.

These violations occurred each day between December 4, 2005, and December 4, 2008, and continuing thereafter.

The principal routes of exposure were through respiration and inhalation. Persons sustain exposures by breathing in airborne silica particles as part of the process of spraying and disseminating Insect Dust DE onto surfaces.

Proposition 65 requires that notice and intent to sue be given to the violator(s) 60 days before the suit is filed. With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within 60 calendar days of the sending of this notice (plus five calendar days because the place address is within the State of California), CAG may file suit.

Dated: December 4, 2008



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 22 of the California Code of Regulations, Sections 12000 through 14000.

#### **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 550 chemicals have been listed as of May 1, 1996. 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: (1) 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 22, California

Code of Regulations, Section 12903). 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.

#### **§14000. Chemicals Required by State or Federal Law to**

**Have been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.**

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required [Health and Safety Code 25249.8)c)].

Readers should note a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation. The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients.

Insect Dust Diatomaceous Earth

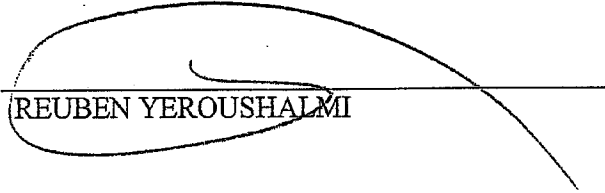
**CERTIFICATE OF MERIT**

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: 11/26/08

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.

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 violator to whom documents were mailed:**

Mary Reuter  
St. Gabriel Labs, LLC  
14044 Litchfield Drive  
Orange, VA 22960

**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:

*12/1/02*

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

Suzana Solis

**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 11562 "B" Ave Auburn, CA 95603-2687
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 2222 "M" St. 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., 4 <sup>th</sup> 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., 2 <sup>nd</sup> 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