

1 Reuben Yeroushalmi (SBN 193981)  
Peter Sato (SBN 238486)  
2 Akaash Gupta (SBN 265592)  
**YERUSHALMI & ASSOCIATES**  
3 9100 Wilshire Boulevard, Suite 610 E  
Beverly Hills, CA 90212  
4 Telephone: (310) 623-1926  
Facsimile: (310) 623-1930  
5 Email: reuben@yeroushalmi.com

6 Attorneys for Plaintiff  
CONSUMER ADVOCACY GROUP, INC.

7 Thomas M. Donnelly (SBN 136546)  
8 Lara T. Kollios (SBN 235395)  
**JONES DAY**  
9 555 California Street, 26<sup>th</sup> Floor  
San Francisco, CA 94104  
10 Telephone: (415) 626-3939  
Facsimile: (415) 875-5700  
11 Email: [tmdonnelly@jonesday.com](mailto:tmdonnelly@jonesday.com)

12 Attorneys for Defendants  
WOODSTREAM CORPORATION, DR. T'S NATURE PRODUCTS, INC., BURKARD  
13 NURSERIES, INC., and PARKVIEW NURSERY, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16 CONSUMER ADVOCACY GROUP, INC., in  
17 the public interest,

18 Plaintiff,

19 v.

20 WOODSTREAM CORPORATION, a  
Pennsylvania corporation; DR. T'S NATURE  
21 PRODUCTS, INC., a Georgia corporation;  
BURKARD INDUSTRIES, INC., a California  
22 corporation; PARKVIEW NURSERY, INC., a  
California corporation; and DOES 1-40;

23 Defendants.  
24

CASE NO. BC427432

**[PROPOSED] STIPULATED CONSENT  
JUDGMENT; [PROPOSED] ORDER**

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: December 4, 2009  
TRIAL DATE: February 2, 2011

1           **1. INTRODUCTION**

2           1.1     On December 4, 2009, plaintiff, the Consumer Advocacy Group, Inc. (“CAG”), a  
3 non-profit corporation, initiated this action by filing its original Complaint for civil penalties and  
4 injunctive relief pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.*  
5 (“Proposition 65”). CAG claimed that certain products manufactured and/or sold by defendants  
6 contain crystalline silica, a chemical listed under Proposition 65 as a potential carcinogen, and thus  
7 require a Proposition 65 warning. CAG’s original Complaint named Woodstream Corporation,  
8 Dr. T’s Nature Products, Inc., Burkard Industries, Inc., and Parkview Nursery, Inc., as defendants.  
9 After receiving evidence from the defendants that one of the products at issue in the original  
10 Complaint, Concern Diatomaceous Earth, does not contain crystalline silica, CAG filed its First  
11 Amended Complaint on July 16, 2010, which removed all claims and allegations regarding  
12 Concern Diatomaceous Earth. As a result, by order entered on August 17, 2010, the Court  
13 dismissed all claims as to original defendant Burkard Nurseries, Inc., without prejudice. Thus, the  
14 only defendants remaining in this action are Woodstream Corporation, Dr. T’s Nature Products,  
15 Inc., and Parkview Nursery, Inc. (hereinafter referred to collectively as “Defendants”). CAG and  
16 the Defendants shall sometimes be referred to individually as a “Party” or collectively as the  
17 “Parties.”

18           1.2     Each of the Defendants employs ten or more persons. Defendant Woodstream  
19 Corporation arranges the manufacture of Dr. T’s Nature Products Mole Out Mole Repelling  
20 Granules, and Dr. T’s Nature Products Mosquito Repelling Granules (hereinafter referred to as the  
21 “Products”), which have been sold in California. Defendant Parkview Nursery has sold Mole Out  
22 in California. CAG alleges that the Products contain crystalline silica, which is listed as a  
23 potential carcinogen by the State of California under Proposition 65.

24           1.3     On or about January 21, 2009, CAG served all Defendants and the appropriate  
25 public enforcement agencies with a Notice of Intent to Sue, claiming that Defendants were in  
26 violation of Proposition 65 in regard to Dr. T’s Nature Products Mole Out Mole Repelling  
27 Granules. On or about August 12, 2010, CAG served Defendants Woodstream Corporation and  
28

1 Dr. T's Nature Products, and the appropriate public enforcement agencies, with another Notice of  
2 Intent to Sue, claiming that these Defendants were in violation of Proposition 65 in regard to Dr.  
3 T's Nature Products Mosquito Repelling Granules. No public enforcement agency has filed suit  
4 against the Defendants with regard to the Products or the alleged violations. Therefore, CAG filed  
5 its original Complaint in this action with regard to Dr. T's Nature Products Mole Out Mole  
6 Repelling Granules on December 4, 2009. The Parties deem the First Amended Complaint, and  
7 by entry of this Consent Judgment the First Amended Complaint shall be deemed, to have been  
8 amended to include Dr. T's Nature Products Mosquito Repelling Granules as well.

9 1.4 CAG's Notices of Intent to Sue and the operative Complaint in this action allege  
10 that Defendants expose persons in California to crystalline silica without first providing clear and  
11 reasonable warnings, in violation of Cal. Health & Safety Code § 25249.6. Defendants deny all  
12 material allegations of the Notices of Intent to Sue and the operative Complaint, have asserted  
13 numerous affirmative defenses, and specifically deny that the Products require a Proposition 65  
14 warning or otherwise cause harm to any person.

15 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
16 jurisdiction over the allegations of violations contained in the operative Complaint and personal  
17 jurisdiction over Defendants as to the acts alleged in the operative Complaint, that venue is proper  
18 in the County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment  
19 as a full and final resolution of all claims which were or could have been asserted in this action  
20 based on the facts alleged in the Notices of Intent to Sue or the operative Complaint.

21 1.6 The Parties have entered into this Consent Judgment in order to settle, compromise  
22 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this  
23 Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by any  
24 of their respective officers, directors, shareholders, employees, agents, parent companies,  
25 subsidiaries, divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, or  
26 retailers, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or  
27 liability, including without limitation, any admission concerning any alleged violation of  
28

1 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or the  
2 meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as  
3 used in Cal. Health & Safety Code § 25249.6, nor shall this Consent Judgment be offered or  
4 admitted as evidence in any administrative or judicial proceeding or litigation in any court,  
5 agency, or forum.

6 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall  
7 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any  
8 other or future legal proceeding unrelated to these proceedings.

9 1.9 The Effective Date of this Consent Judgment shall be the date on which it is  
10 entered as a judgment by this Court.

11 **2. PROPOSITION 65 COMPLIANCE – CEASE SALES OR PROVIDE**  
12 **WARNINGS**

13 2.1 Defendants have represented to CAG that, upon receipt of the respective Notices  
14 of Intent to Sue from CAG, they have not sold or distributed the Products in California.  
15 Defendants shall not resume sales or distribution of either Product in California, unless they  
16 provide a Proposition 65-compliant warning (as set forth in Section 2.2 below) or secure a  
17 determination from this Court or the California Office of Health Hazard Assessment that no such  
18 warning is required.

19 2.2 The warning required by Section 2.1 above shall comply with the "safe harbor"  
20 warning methods set out in 27 Cal. Code Regs. § 25601 *et seq.*

21 **3. SETTLEMENT PAYMENT**

22 3.1 Within ten (10) days of the Effective Date, Woodstream Corporation (on behalf of  
23 all Defendants) shall pay a total of Eighteen Thousand Dollars (\$18,000) to Yeroushalmi &  
24 Associates, CAG's attorneys, inclusive of all potential civil penalties, attorneys' fees, and costs.  
25 CAG shall apply this entire payment as partial reimbursement of its investigation fees and costs,  
26 attorneys' fees, and other costs it has incurred in investigating, bringing this matter to Defendants'  
27 attention, litigating, and negotiating a settlement in the public interest.

28

1           **4.       MODIFICATION OF CONSENT JUDGMENT**

2           4.1     This Consent Judgment may be modified only by written agreement and stipulation  
3 of the Parties, or upon noticed motion filed by any Party, followed by entry of a modified consent  
4 judgment by the Court.

5           **5.       ENFORCEMENT OF CONSENT JUDGMENT**

6           5.1     Any Party may, by motion or application for an order to show cause filed with this  
7 Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing party  
8 shall be entitled to its reasonable attorneys' fees and costs associated with such motion or  
9 application.

10          **6.       APPLICATION OF CONSENT JUDGMENT**

11          6.1     This Consent Judgment shall apply to and be binding upon the  
12 Parties, and their respective officers, directors, shareholders, employees, agents, parent companies,  
13 subsidiaries, divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers,  
14 retailers, and all other entities in the distribution chain down to the consumer of either Product, the  
15 predecessors, successors and assigns of any of them, and the general public.

16          **7.       BINDING EFFECT, CLAIMS COVERED AND RELEASED**

17          7.1     This Consent Judgment is a full, final, and binding resolution between CAG, on  
18 behalf of itself, the general public, and in the public interest, and Defendants, of any alleged  
19 violation of Proposition 65 or its implementing regulations, and fully and finally resolves all  
20 claims that have been or could have been asserted in this action against any of the Defendants, for  
21 failure to provide Proposition 65 warnings for the Products regarding crystalline silica. CAG, on  
22 behalf of itself, the general public, and in the public interest, hereby releases and discharges  
23 Defendants, and their respective officers, directors, shareholders, employees, agents, parent  
24 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, distributors,  
25 wholesalers, retailers, and all other entities in the distribution chain down to the consumer of either  
26 Product, and the predecessors, successors and assigns of any of them (collectively, "Released  
27 Parties"), from any and all claims asserted, or that could have been asserted, in this action arising  
28

1 from or related to the alleged failure to provide Proposition 65 warnings for the Products regarding  
2 crystalline silica. CAG, on behalf of itself only, hereby releases and discharges the Released  
3 Parties from any and all known and unknown past, present, and future rights, claims, causes of  
4 action, suits, damages, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees,  
5 costs, and expenses arising from or related to the claims asserted, or that could have been asserted,  
6 under state or federal law, regarding the Products or the facts alleged in the Notices of Intent to  
7 Sue or the operative Complaint, including without limitation any and all claims concerning  
8 exposure of any person to Proposition 65-listed chemicals in the Products. Compliance with the  
9 terms of this Consent Judgment shall constitute compliance by the Released Parties with  
10 Proposition 65 with respect to exposures to crystalline silica contained in the Products. This  
11 release does not limit or affect the obligations of any Party created under this Consent Judgment.

12       7.2    Unknown Claims. It is possible that other injuries, damages, liability, or  
13 claims not now known to the Parties arising out of the facts alleged in the Notices of Intent to Sue  
14 or the operative Complaint and relating to the Products will develop or be discovered. This  
15 Consent Judgment is expressly intended to cover and include all such injuries, damages, liability,  
16 and claims, including all rights of action therefor. CAG has full knowledge of the contents of Cal.  
17 Civil Code § 1542. CAG, on behalf of itself only, acknowledges that the claims released in  
18 Section 7.1 above may include unknown claims, and nevertheless waives Cal. Civil Code § 1542  
19 as to any such unknown claims. Cal. Civil Code § 1542 reads as follows:

20  
21                   **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**  
22                   **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**  
23                   **OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**  
24                   **WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**  
25                   **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

26 CAG acknowledges and understands the significance and consequences of this specific waiver of  
27 Cal. Civil Code § 1542.

28 ///

///

///

1           **8. SEVERABILITY**

2           8.1     In the event that any of the provisions of this Consent Judgment are held by a court  
3 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

4           **9. NOTICE AND CURE**

5           9.1     No action to enforce this Consent Judgment may be commenced, and no notice of  
6 violation related to any Product may be served or filed against any of the Defendants by CAG,  
7 unless the Party seeking enforcement or alleging violation notifies the other Parties of the specific  
8 acts alleged to breach this Consent Judgment at least ninety (90) days before serving or filing any  
9 motion, action, or notice of violation. Any notice to Defendants must contain (1) the name of the  
10 product, (2) specific dates when the product was sold in California without the warning specified  
11 in Section 2 of this Consent Judgment, (3) the store or other place at which the product was  
12 available for sale to California consumers, and (4) any other evidence or other support for the  
13 allegations in the notice.

14          9.2     Within 30 days of receiving the notice described in Section 9.1, Defendants shall  
15 either (1) withdraw the product from sales in California, (2) provide the warning described in  
16 Section 2 for the product, or (3) refute the information provided under Section 9.1. Should the  
17 Parties be unable to resolve the dispute, any Party may seek relief under Section 5 of this Consent  
18 Judgment.

19          **10. GOVERNING LAW**

20          10.1    The terms and conditions of this Consent Judgment shall be governed by and  
21 construed in accordance with the laws of the State of California.

22          **11. PROVISION OF NOTICE**

23          11.1    All notices required by this Consent Judgment shall be sent to the following.

24 For Consumer Advocacy Group, Inc.:  
25           Reuben Yeroushalmi  
26           YEROUSHALMI & ASSOCIATES  
27           9100 Wilshire Boulevard, Suite 610 E  
28           Beverly Hills, CA 90212  
            Facsimile No: (310) 623-1930

1 For Defendants:

2 Thomas M. Donnelly  
3 JONES DAY  
4 555 California Street, 26<sup>th</sup> Floor  
5 San Francisco, CA 94104  
6 Facsimile No: (415) 875-5700

7  
8 **12. COURT APPROVAL**

9 12.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be void  
10 and have no force or effect.

11 12.2 CAG shall comply with Calif. Health & Safety Code § 25249.7(f) and with 11  
12 Calif. Code Regs. § 3003.

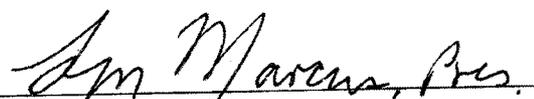
13 **13. EXECUTION AND COUNTERPARTS**

14 13.1 This Stipulated Consent Judgment may be executed in counterparts, which taken  
15 together shall be deemed to constitute one document. A facsimile of .pdf signatures shall be  
16 construed as valid as the original signatures.

17 **14. AUTHORIZATION**

18 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
19 by the Party he or she represents to stipulate to the terms and conditions of this Consent Judgment,  
20 to enter into and execute this Consent Judgment on behalf of the Party represented, and legally to  
21 bind that Party to this Consent Judgment. The undersigned have read, understand and agree to all  
22 of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each  
23 Party shall bear its own fees and costs.

24 CONSUMER ADVOCACY GROUP, INC.

25   
26 Lyn Marcus, President

Dated: 10/15/10

27 ///

28 ///

///

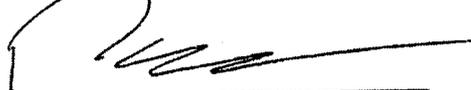
///

1 WOODSTREAM CORPORATION

2   
3 Peter W. Klein, Vice President

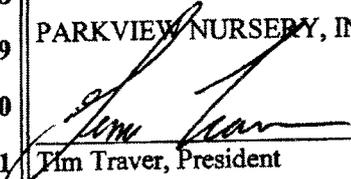
Dated: October 14, 2010

4 DR. T'S NATURE PRODUCTS, INC.

5   
6 Peter W. Klein, Vice President

Dated: October 14, 2010

8 PARKVIEW NURSERY, INC.

9   
10 Tim Traver, President

Dated: 10/14/2010

12 **ORDER AND JUDGMENT**

13  
14 Based upon the Parties' stipulation, and good cause appearing therefor, this Consent  
15 Judgment is approved and judgment is hereby entered according to its terms.

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

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

18  
19 Judge, Superior Court of the State of California

20 SFI-651648v1  
21 Woodstream/CAG/Consent Judgment  
22 126753 - 630001  
23 Last Edited: 10/13/10

24  
25  
26  
27  
28