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6 Facsimile: (213) 382-3430

7 Counsel for Plaintiff Consumer Advocacy Group, Inc.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 **CONSUMER ADVOCACY GROUP, INC.,**

11 Plaintiff,

12 v.

13 **UNITED PET GROUP, INC.; SPECTRUM**
14 **BRANDS, INC.; et al.,**

15 Defendants.

CASE No. BC-443645

[PROPOSED] CONSENT JUDGMENT

(Health and Safety Code § 25249 et seq.)

16 **1. INTRODUCTION**

17 **1.1 Plaintiff:** The Plaintiff is Consumer Advocacy Group, Inc. (“CAG” or
18 “Plaintiff”), a non-profit foundation. CAG is dedicated to, among other causes, protecting the
19 environment, improving human health, and supporting environmentally sound practices.

20 **1.2 Defendants:** The Defendants are United Pet Group, Inc. (“UPG”) and Spectrum
21 Brands, Inc. (“Spectrum”).

22 **1.3 The Parties:** Plaintiff and Defendants are sometimes referred to herein in the
23 singular as a “Party” and collectively as the “Parties.”
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[PROPOSED] CONSENT JUDGMENT

1 in California to the Covered Chemical in amounts, if any, that would require a warning under
2 Proposition 65. Defendants further dispute Plaintiff's allegation that no Covered Products were
3 sold in California with a clear and reasonable warning. Plaintiff disputes Defendants' assertions.
4 Therefore, in order to avoid prolonged litigation and the waste of private and judicial resources
5 that would arise from prosecuting, defending, and adjudicating the issues on which the Plaintiff
6 and Defendants disagree, the Parties have agreed, subject to the approval of the Court, to
7 compromise their disputed claims and defenses, and have entered into a settlement agreement, the
8 terms of which are embodied in this Consent Judgment.

9 **1.9 No Admissions:** Neither the Consent Judgment nor any of its provisions shall be
10 construed as an admission by any Party of any fact, finding, issue of law, or violation of law,
11 including Proposition 65 or any other statute, regulation, or common law requirement related to
12 exposure to the Covered Chemical or other chemicals listed under Proposition 65 from the
13 Covered Products. By executing this Consent Judgment, and agreeing to provide the relief and
14 remedies specified herein, Defendants do not admit that this Action is not pre-empted by Federal
15 law, or that Defendants have committed any violations of Proposition 65, or any other law or
16 legal duty, and, further, specifically deny that they have committed any such violations. Rather,
17 Defendants maintain that all Covered Products distributed, marketed and/or sold by Defendants in
18 California have at all times been in compliance with Proposition 65. Nothing in this Consent
19 Judgment shall prejudice, waive, or impair any right, remedy, or defense that Plaintiff and
20 Defendants may have in any other or in future legal proceedings unrelated to these proceedings.
21 Defendants reserve all of their rights and defenses with regard to any claim by any person under
22 Proposition 65 or otherwise. Nevertheless, this paragraph shall not diminish or otherwise affect
23 the obligations, responsibilities, waivers, releases, and/or duties provided for under this Consent
24 Judgment.

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26 **2. INJUNCTIVE RELIEF**

27 **2.1** The Parties acknowledge that UPG is the entity that distributes the Covered
28 Products and, accordingly, the injunctive relief requirements established herein apply only to it.

1 In the spirit of settlement and compromise, and in order to promote the public interest, UPG
2 agrees to provide the following warning on Covered Products it distributes in California:

3 **NOTICE:** This product contains a chemical known to the State of
4 California to cause cancer.

5 The warning statement above shall be provided on the label of the Covered Products in a
6 conspicuous manner, where other precautionary statements appear. The Parties acknowledge that
7 the signal word "NOTICE" in Proposition 65 warnings for pesticides is necessary and appropriate
8 because federal regulations promulgated under the Federal Insecticide, Fungicide and Rodenticide
9 Act ("FIFRA"), and related guidance documents, prohibit the use of the signal word
10 "WARNING" except in circumstances not presented by Plaintiff's claims. Plaintiff has agreed to
11 the use of the "NOTICE" signal word herein solely due to the application of FIFRA in this matter.

12 **2.2** The Parties acknowledge that no changes to the label or labeling for any Covered
13 Products that are the subject of this Consent Judgment can be made except as permitted by certain
14 federal and California agencies in their implementation of state and federal laws, other than
15 Proposition 65, that regulate the manufacture, sale, labeling, distribution and use of these Covered
16 Products. UPG has submitted to the U.S. Environmental Protection Agency revised labels for the
17 Covered Products incorporating the warning statement described in Section 2.1 above, and UPG
18 shall not be required to implement the warning provision of Section 2.1 until 90 days after the last
19 relevant regulatory agency has approved, in writing, the proposed label change. No Defendant
20 shall be required to re-label or recall any Covered Products in the stream of commerce at the time
21 this Consent Judgment is approved and no Defendant shall be required to change the use
22 instructions on the label from those approved previously by such federal and California agencies.
23 Under no circumstances shall this Consent Judgment be interpreted to require any Defendant to
24 make any other applications or secure any other approvals from federal or state agencies
25 regarding the labeling (including specifically the use instructions or warnings thereon) for the
26 Covered Products, on any other aspect of their manufacture, distribution, sale or use or to
27 distribute any Covered Product in violation of federal and California labeling requirements as
28 such labeling requirements are interpreted by the applicable federal or California agency.

1 **3. MONETARY PAYMENTS**

2 **3.1** In settlement of Plaintiff's claims against it and Spectrum, UPG shall pay a total of
3 \$67,500 to Plaintiff, as described in paragraphs 3.2 and 3.3 below. Spectrum shall not be required
4 to make any separate payment to Plaintiff.

5 **3.2 Payment In Lieu of Civil Penalties:** Within ten (10) days after the Court
6 approves this Consent Judgment, UPG shall pay or cause to be paid \$9,500 in the form of a check
7 made payable to Consumer Advocacy Group, Inc. CAG will use the payment for such projects
8 and purposes related to environmental protection, worker health and safety, or reduction of
9 human exposure to hazardous substances (including administrative and litigation costs arising
10 from such projects), as CAG may choose. The check shall be delivered to: Reuben Yeroushalmi,
11 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
12 90212.

13 **3.3 Reimbursement of Attorneys Fees and Costs:** Within ten (10) days after the
14 Court approves this Consent Judgment, UPG shall pay or cause to be paid \$58,000 in the form of
15 a check made payable to "YEROUSHALMI & ASSOCIATES" as reimbursement for the
16 investigation fees and costs, testing costs, expert witness fees, attorneys fees, and other litigation
17 costs and expenses. The check shall be delivered by overnight delivery to: Reuben Yeroushalmi,
18 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California
19 90212.

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21 **4. WAIVER AND RELEASE OF ALL CLAIMS**

22 **4.1 Waiver And Release of Claims Against Defendants:** As to those matters raised
23 in this Action, the Complaint, and/or in Plaintiff's Notices (whether as to Covered Products or as
24 to the Covered Chemical, and without regard to any potential disputes about the adequacy of such
25 Notices), and any related actions, Plaintiff, on behalf of the general public, hereby releases
26 Defendants and waives any claims against Defendants for injunctive relief or damages, penalties,
27 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses
28 or any other sum incurred or claimed, for any claims under Proposition 65 or any related actions

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IT IS SO STIPULATED:

Dated: _____

CONSUMER ADVOCACY GROUP, INC.

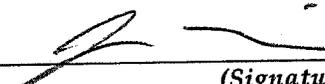
(Signature)

(Name)

(Title)

Dated: Jan. 10, 2011

UNITED PET GROUP, INC.



(Signature)

John T. Wilson

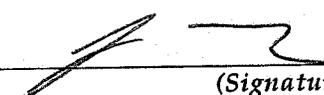
(Name)

Vice President and Secretary

(Title)

Dated: Jan. 10, 2011

SPECTRUM BRANDS, INC.



(Signature)

John T. Wilson

(Name)

Senior Vice President, Secretary and General Counsel

(Title)

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APPROVED AS TO FORM:

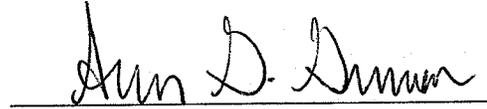
Dated: 1/21/11



REUBEN YEROUSHALMI

**YEROUSHALMI AND ASSOCIATES
COUNSEL FOR PLAINTIFF CONSUMER
ADVOCACY GROUP, INC.**

Dated: 1/19/2011



ANN GRIMALDI

**MCKENNA LONG & ALDRIDGE
COUNSEL FOR DEFENDANTS UNITED PET, INC.
AND SPECTRUM BRANDS, INC.**

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:27438676.1