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

11 **CONSUMER ADVOCACY GROUP, INC.,**

12  
13 Plaintiff,

14 v.

15 **UNITED PET GROUP, INC.; SPECTRUM**  
16 **BRANDS, INC.; et al.,**

17 Defendants.  
18

CASE NO. BC-443645

**[PROPOSED] CONSENT JUDGMENT**

*(Health and Safety Code § 25249 et seq.)*

19  
20 **1. INTRODUCTION**

21 **1.1 Plaintiff:** The Plaintiff is Consumer Advocacy Group, Inc. (“CAG” or  
22 “Plaintiff”), a non-profit foundation. CAG is dedicated to, among other causes, protecting the  
23 environment, improving human health, and supporting environmentally sound practices.

24 **1.2 Defendants:** The Defendants are United Pet Group, Inc. (“UPG”) and Spectrum  
25 Brands, Inc. (“Spectrum”).

26 **1.3 The Parties:** Plaintiff and Defendants are sometimes referred to herein in the  
27 singular as a “Party” and collectively as the “Parties.”  
28

1           **1.4 The Action:** This action (“Action”) is brought under Proposition 65, the popular  
2 name for California’s Safe Drinking Water and Toxic Enforcement Act of 1986, *Cal. Health and*  
3 *Safety Code* Section 25249.5 *et seq.* (sometimes referred to as “the Act”). Plaintiff proceeds  
4 under Section 25249.7(d) as a “person in the public interest.” Solely for purposes of this Consent  
5 Judgment, the Parties stipulate that Plaintiff’s Notices of Intent to Sue, attached at **Exhibit A** to  
6 this Consent Judgment (“Plaintiff’s Notices”) were served upon Defendants and public  
7 prosecutors, including the Attorney General and all district attorneys and city attorneys authorized  
8 to prosecute an action to enforce the Act, accompanied by certificates of merit, in compliance  
9 with Section 25249.7(d)(1) of the Act. Plaintiff is allowed to proceed pursuant to Section  
10 25249.7(d)(2), because none of those public prosecutors commenced an action pursuant to  
11 Plaintiff’s Notices.

12           **1.5 The Complaint:** On August 13, 2010, Plaintiff filed a complaint against  
13 Defendants in the Superior Court for the City and County of Los Angeles (“Complaint”) alleging  
14 that Defendants violated Proposition 65 by exposing individuals in California to p-  
15 dichlorobenzene (the “Covered Chemical”), designated under the Act as “known to the State of  
16 California to cause cancer” within the meaning of Section 25249.8(b), without providing  
17 Proposition 65 warnings to such individuals, as alleged to be required under Section 25249.6.  
18 According to the Complaint, individuals in California are exposed to the Covered Chemical upon  
19 consumption or foreseeable use of 8 in 1 Bird Protector™ for Small Birds/Cages and/or 8 in 1  
20 Bird Protector™ for Large Birds/Cages, manufactured, packaged, distributed, marketed and/or  
21 sold by Defendants for use in California. These products are identified with specificity in  
22 Plaintiff’s Notices and the Complaint, and such products, as identified in Plaintiff’s Complaint  
23 and Notices, are referred to collectively herein as the “Covered Products.”

24           **1.6 Jurisdiction:** Solely for purposes of this Consent Judgment, the Parties stipulate  
25 that the Court has personal jurisdiction over Defendants as to the acts alleged in the Action; that  
26 venue is proper in the City and County of Los Angeles; that the claims in the Action present a live  
27 controversy as to the application of Proposition 65 to the Covered Products and the Covered  
28 Chemical therein; that this Court has jurisdiction to enter this Consent Judgment as a resolution of

1 all claims alleged in the Action; and that the Court shall retain jurisdiction to implement the  
2 Consent Judgment.

3 **1.7 The Standard for Determining Whether Proposition 65 Warnings Are**

4 **Required:** Section 25249.6 of Proposition 65 provides that “[n]o person in the course of  
5 business shall knowingly and intentionally expose any individual to a chemical known to the state  
6 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
7 individual, except as provided in Section 25429.10.” Section 25249.10(c), under the heading  
8 “Exemptions from Warning Requirement,” provides that Section 25249.6 “shall not apply” to an  
9 “exposure for which the person responsible can show that the exposure poses no significant risk  
10 assuming lifetime exposure at the level in question for substances known to the state to cause  
11 cancer, and that the exposure will have no observable effect assuming exposure at one thousand  
12 (1000) times the level in question for substances known to the state to cause reproductive toxicity,  
13 based on evidence and standards of comparable scientific validity to the evidence and standards  
14 which form the scientific basis for the listing of such chemical . . . . In any action brought to  
15 enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this  
16 subdivision shall be on the defendant.” Proposition 65 thus makes it unlawful for a person  
17 subject to the Act to expose an individual in California to a Proposition 65-listed chemical  
18 without first providing a Proposition 65 warning unless an exemption to this requirement applies.  
19 Where the defendant asserts an exemption because the alleged exposure is beneath the level that  
20 would require a warning, the burden of proof is on the defendant to establish that the exemption  
21 applies.

22 **1.8 Settlement.** Plaintiff’s Notices were issued to Defendants on February 23, 2010.

23 The Parties have engaged in informal discovery and settlement negotiations since that time. As a  
24 result of this exchange of information, the Parties agree on some aspects of the allegations, but  
25 disagree as to several other aspects, and thus disagree as to whether Defendants have violated  
26 Proposition 65. Specifically, the Parties agree that each of the Covered Products contains the  
27 Covered Chemical. The Defendants dispute, however, that the manufacture, packaging,  
28 distribution, marketing, sale or use of the Covered Products results in the exposure of individuals

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.

25  
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

1 arising from the sale, distribution or use in California of any Covered Products, including all  
2 claims that may arise from the acts alleged in the Plaintiff's Notices or the Complaint.

3 **4.2 Defendants' Waiver And Release Of Plaintiff:** Defendants hereby release  
4 Plaintiff from and waive any claims against Plaintiff for injunctive relief or damages, penalties,  
5 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,  
6 expenses, or any other sum incurred or claimed or which could have been claimed for matters  
7 related to the Action.

8 **4.3 Matters Covered By This Consent Judgment/Release of Future Claims:** This  
9 Consent Judgment is a full, final, and binding resolution between the Plaintiff, acting on behalf of  
10 itself and on behalf of the general public in the public interest pursuant to *Health and Safety Code*  
11 Section 25249.7(d), and Defendants, as to all claims arising from Defendants' alleged failure to  
12 provide clear, reasonable, and lawful warnings of exposure to the Covered Chemicals.  
13 Compliance with the terms of this Consent Judgment resolves any issue, now and in the future,  
14 concerning compliance by Defendants with existing requirements of Proposition 65 to provide  
15 clear and reasonable warning about exposure to the Covered Chemical in the Covered Products.

16 **4.4. Waiver Of Civil Code Section 1542:** This Consent Judgment is intended as a full  
17 settlement and compromise of all claims arising out of or relating to Plaintiff's Notices and/or the  
18 Action regarding the Covered Products.. No claim is reserved as between the Parties hereto, and  
19 Plaintiff expressly waives any and all rights which it may have under the provisions of  
20 Section 1542 of the *Civil Code* of the State of California, which provides:

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

25 **4.5.** For purposes of this entire paragraph 4, the terms "Plaintiff" and "Defendants" are  
26 defined as follows. The term "Plaintiff" includes the Plaintiff as defined at paragraph 1.1 above,  
27 and also includes its members, subsidiaries, successors, and assigns and its directors, officers,  
28 agents, attorneys, representatives, and employees. The term "Defendants" includes the

1 Defendants, as that term is defined in paragraph 1.2 above; their respective corporate affiliates  
2 (including any and all corporate parents and subsidiaries); the directors, officers, agents,  
3 attorneys, representatives, employees, licensors, licensees, predecessors, or successors of any of  
4 them; and their respective downstream customers (including distributors and retailers) of the  
5 Covered Products and the predecessors, successors and assigns of any of them.

6  
7 **5. MODIFICATION OF CONSENT JUDGMENT**

8 This Consent Judgment may be modified from time to time on any basis by express  
9 written agreement of the Parties, with the approval of the Court, or by an order of this Court in  
10 accordance with law.

11 **5.1** This paragraph shall not apply to the monetary relief sections of this Consent  
12 Judgment.

13 **5.2** The Attorney General shall be served with notice of any proposed modification to  
14 this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

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16 **6. ENFORCEMENT OF CONSENT JUDGMENT**

17 **6.1** The Parties may, by motion or other application before this Court, and upon notice  
18 having been given to all Parties in accordance with paragraph 10 below, unless waived, enforce  
19 the terms and conditions of this Consent Judgment and seek whatever fines, costs, penalties, or  
20 remedies are provided by law. The prevailing party on any such motion or application shall be  
21 entitled to recover reasonable attorneys' fees and costs.

22 **6.2** The Parties may enforce the terms and conditions of this Consent Judgment  
23 pursuant to paragraph 6.1 only after the complaining party has first given thirty (30) days notice  
24 to the Party allegedly failing to comply with the terms and conditions of the Consent Judgment  
25 and has attempted, in an open and good faith manner, to resolve such Party's alleged failure to  
26 comply.

1       **7.       GOVERNING LAW**

2               **7.1**       The terms of this Consent Judgment shall be governed by, and construed in  
3 accordance with, the laws of the State of California.

4               **7.2**       The Parties have participated jointly in the preparation of this Consent Judgment  
5 and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment  
6 was subject to revision and modification by the Parties and has been accepted and approved as to  
7 its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing  
8 in this Consent Judgment shall not be interpreted against any Party as a result of the manner in  
9 which this Consent Judgment was prepared. Each Party to this Consent Judgment agrees that any  
10 statute or rule of construction providing that ambiguities are to be resolved against the drafting  
11 party should not be employed in the interpretation of this Consent Judgment and, in this regard,  
12 the Parties hereby waive the applications of California *Civil Code* Section 1654.

13  
14       **8.       ENTIRE AGREEMENT**

15               This Consent Judgment constitutes the sole and entire agreement and understanding  
16 between the Parties with respect to the subject matter hereof, and any prior discussions,  
17 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
18 and therein. There are no warranties, representations, or other agreements between the Parties,  
19 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
20 other than those specifically referred to herein, shall be deemed to exist or bind any of the Parties  
21 hereto. No supplementation, modification, waiver, or termination of this Consent Judgment shall  
22 be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the  
23 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the  
24 other provisions hereof, whether or not similar, nor shall such waiver constitute a continuing  
25 waiver.

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1       **11.     AUTHORIZATION**

2           The undersigned are authorized to execute this Consent Judgment on behalf of their  
3       respective Parties and have read, understood, and agree to all of the terms and conditions of this  
4       Consent Judgment.

5  
6       **12.     COUNTERPARTS/FACSIMILE SIGNING**

7           This Consent Judgment may be executed in one or more counterparts, each of which shall  
8       be deemed an original, and all of which, when taken together, shall constitute one and the same  
9       document. All signatures need not appear on the same page of the document and signatures of  
10      the Parties transmitted by facsimile shall be deemed binding.

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**IT IS SO STIPULATED:**

Dated: 1/14/11

**CONSUMER ADVOCACY GROUP, INC.**

  
(Signature)

MICHEL SABBON  
(Name)

EXECUTIVE DIRECTOR  
(Title)

Dated: \_\_\_\_\_

**UNITED PET GROUP, INC.**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Dated: \_\_\_\_\_

**SPECTRUM BRANDS, INC.**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

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**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

**CONSUMER ADVOCACY GROUP, INC.**

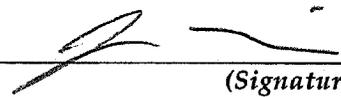
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(Name)

\_\_\_\_\_  
(Title)

Dated: Jan. 10, 2011

**UNITED PET GROUP, INC.**

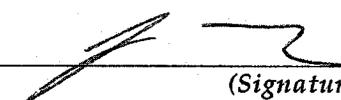
  
(Signature)

John T. Wilson  
(Name)

Vice President and Secretary  
(Title)

Dated: Jan. 10, 2011

**SPECTRUM BRANDS, INC.**

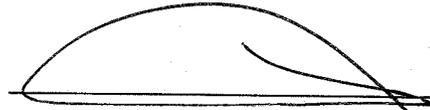
  
(Signature)

John T. Wilson  
(Name)

Senior Vice President, Secretary and General Counsel  
(Title)

1 **APPROVED AS TO FORM:**

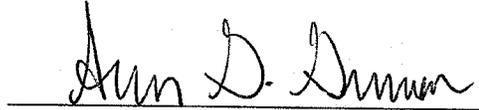
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**REUBEN YEROUSHALMI**

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

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7 Dated: 1/19/2011



**ANN GRIMALDI**

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

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11 **IT IS SO ORDERED:**

12 In accordance with the stipulation of Plaintiff and Defendants, the Court hereby  
13 incorporates the terms of the Consent Judgment into this Order. If a party violates the provisions  
14 of this Consent Judgment, this Court retains jurisdiction over this matter.  
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16 Dated: \_\_\_\_\_

17 **JUDGE OF THE SUPERIOR COURT**

18 SF:27438676.1