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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

13 NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

14 Plaintiff,

16 v.

17 PETCO ANIMAL SUPPLIES STORES, INC.,
18 *et al.*,

19 Defendants.

) Case No. RG09487873

) **NOTICE OF MOTION AND MOTION**
) **FOR JUDICIAL APPROVAL OF**
) **PROPOSED CONSENT JUDGMENTS;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES**

) Complex Civil Case

) Date: December 10, 2010

) Time: 10:00 a.m.

) Dept.: 20

) Judge: Honorable Robert B. Freedman

) Action Filed: December 7, 2009

) Trial Date: TBD

) **Reservation No.: R-1117320**

1 **NOTICE OF MOTION AND MOTION**

2 TO THE CALIFORNIA ATTORNEY GENERAL AND ALL PARTIES AND THEIR
3 COUNSEL OF RECORD:

4 PLEASE TAKE NOTICE that on December 10, 2010, at 10:00 a.m., in the Superior
5 Court of Alameda, Department 20, 1221 Oak Street, Oakland, CA 94612, the Honorable Robert
6 B. Freedman presiding, Plaintiff Natural Resources Defense Council, Inc., will and hereby does
7 move for judicial approval of two proposed consent judgments in this matter, one of which is
8 with Defendants Central Garden & Pet Company, Inc.; Farnam Companies, Inc.; Petco Animal
9 Supplies Stores, Inc.; Drs. Foster & Smith, Inc.; Fins, Furs & Feathers, Inc. d/b/a Petstore.com;
10 Ralphs Grocery Company; Jeffers, Inc.; KV Vet Supply, Inc.; Lee's Pet Club, Inc. d/b/a Pet Club
11 Stores; Red Cart Market, Inc. d/b/a Pet Club Stores; Orchard Supply Hardware LLC; Pet Food
12 Express LTD; Petsmart Inc.; Petsmart Store Support Group, Inc.; Wellmark International, Inc.;;
13 and the second of which is with Sergeant's Pet Care Products, Inc.; Albertsons, Inc.; New
14 Albertsons, Inc.; PETCO Animal Supplies Stores, Inc.; Petsmart, Inc.; PetSmart Store Support
15 Group, Inc.; Lee's Pet Club, Inc., d/b/a Pet Club Stores; Red Cart Market, Inc., d/b/a Pet Club
16 Stores; and Ralphs Grocery Co.

17 This motion is brought pursuant to Health & Safety Code §25249.7(f)(4) on the grounds
18 that the settlement of the claims pursuant to these two proposed consent judgments meets all of
19 the requirements of Proposition 65. Pursuant to Health & Safety Code §25249.7(f)(5), this
20 motion and all supporting papers are being served on the Attorney General. If the Attorney
21 General does not object or otherwise respond, that does not mean that the Attorney General
22 endorses or concurs in the settlement. *See* 11 C.C.R. §3003(a).

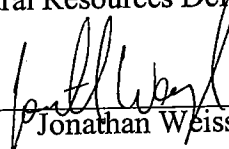
1 This motion is based on this Notice of Motion and Motion, the accompanying
2 Memorandum of Points and Authorities, the Declaration of Jonathan Weissglass, the complete
3 files and records in this matter, and such other and further matters as may be called to the
4 attention of the Court.

5 Dated: October 19, 2010

Respectfully submitted,

6 JONATHAN D. WEISSGLASS
7 BARBARA J. CHISHOLM
8 Altshuler Berzon LLP

9 MICHAEL E. WALL
10 Natural Resources Defense Council, Inc.

11 By: 
Jonathan Weissglass

12 Attorneys for Plaintiff NRDC
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this action brought pursuant to Proposition 65, Plaintiff Natural Resources Defense
4 Council, Inc. ("NRDC") sued 19 companies that manufactured, distributed, or sold
5 propoxur-containing flea-and-tick collars for sale or use within the State of California. NRDC
6 now seeks the Court's approval of two settlement agreements with all but one of those
7 Defendants.¹

8 One settlement agreement is between NRDC, flea-and-tick collar manufacturers Central
9 Garden & Pet Company, Inc. ("Central"), Farnam Companies, Inc. ("Farnum"), and Wellmark
10 International, Inc. ("Wellmark"), and certain retailers that sold and sell collars manufactured by
11 those Central, Farnum, and Wellmark. These Defendants are referred to collectively as the
12 "Central Settling Defendants." The second settlement agreement is between NRDC, flea-and-
13 tick collar manufacturer Sergeant's Pet Care Products, Inc. ("Sergeant's"), and certain retailers
14 that sold or sell collars manufactured by Sergeant's. These Defendants are referred to
15 collectively as the "Sergeant's Settling Defendants."

16 The settling Defendants have agreed to proposed consent judgments. In negotiating the
17 terms of these proposed consent judgments, all settling parties have been represented by
18 experienced counsel. The settlements are the result of substantial arms-length negotiations
19 between counsel, and constitute fair and reasonable resolutions of the claims raised. The
20 proposed consent judgments have been submitted for review to the California Attorney General,
21 and are in full compliance with the statutory and regulatory requirements of Proposition 65. The
22 consent judgments are in the interests of the general public and should be approved.

23 **II. BACKGROUND**

24 **A. Statutory and Procedural Background**

25 This is an action to enforce the Safe Drinking Water and Toxic Enforcement Act of 1986,
26 Health & Safety Code §25249.5, also known as "Proposition 65." Proposition 65 prohibits any

27 _____
28 ¹ Defendant Virbac Corporation ("Virbac") is not a party to either of the proposed
consent judgments for which NRDC here seeks approval.

1 person in the course of doing business from knowingly and intentionally exposing any individual
2 to a chemical known to the State of California to cause cancer, without first giving clear and
3 reasonable warning of such exposure. Health & Safety Code §25249.6.

4 Proposition 65 establishes a procedure by which the State of California lists chemicals
5 known by the State to cause cancer. On August 11, 2006, the Carcinogen Identification
6 Committee placed propoxur on the list of chemicals “known to the State of California to cause
7 cancer or reproductive toxicity” within the meaning of Health & Safety Code §25249.8(b); and
8 one year later, propoxur became subject to the warning requirements under Proposition 65.
9 Health & Safety Code §25249.10(b).

10 NRDC has served Notices of Intent to Sue (“Notices”) on Defendants and public
11 prosecutors, including the Attorney General and all district attorneys and city attorneys in
12 California authorized to prosecute a Proposition 65 action, in compliance with Health & Safety
13 Code §25249.7(d)(1). Declaration of Jonathan Weissglass (“Weissglass Dec.”) ¶5. The Notices
14 identified certain propoxur-containing flea-and-tick collars manufactured, distributed and/or sold
15 by the Defendants, which NRDC contended exposed individuals in California to propoxur
16 without reasonable warning as required by Proposition 65. *Id.* None of the public prosecutors
17 served with the Notices commenced an action. *Id.*

18 On December 7, 2009, NRDC filed a Complaint against the settling Defendants in the
19 Alameda County Superior Court, alleging that they violated Proposition 65 by exposing
20 individuals in California to propoxur without providing warnings as required under Health &
21 Safety Code §25249.6. On January 19, 2010, NRDC filed an Amended Complaint that corrected
22 the name of one Defendant, but which was otherwise identical to the original Complaint.

23 **B. Central Settlement Agreement**

24 NRDC and the Central Settling Defendants have reached a settlement of NRDC’s claims
25 related to the manufacture, distribution and/or sale for use in California of certain flea-and-tick
26 collars manufactured by Defendants Central, Farnum and Wellmark (“Central Settlement
27 Agreement”). Weissglass Dec., Exh. A. The Central Settling Defendants are: Central; Farnum;
28 Petco Animal Supplies Stores, Inc.; Drs. Foster & Smith, Inc.; Fins, Furs & Feathers, Inc. d/b/a

1 Petstore.com; Ralphs Grocery Company; Jeffers, Inc.; KV Vet Supply, Inc.; Lee's Pet Club, Inc.
2 d/b/a Pet Club Stores; Red Cart Market, Inc. d/b/a Pet Club Stores; Orchard Supply Hardware
3 LLC; Pet Food Express LTD; Petsmart Inc.; Petsmart Store Support Group, Inc.; and Wellmark.

4 The Central Settlement Agreement covers flea-and-tick collars manufactured, packaged,
5 distributed, marketed or sold by Defendants Central, Farnam, and Wellmark, as identified in
6 NRDC's Notices to the Central Settling Defendants. The parties to the agreement acknowledge
7 that these flea-and-tick collars contain propoxur and that the Central Settling Defendants did not
8 include Proposition 65 warnings for these products for some period of time within one year of
9 the filing of the Complaint. Weissglass Dec. Exh. A ¶1.8. However, the Central Settling
10 Defendants dispute that the manufacture, packaging, distribution, marketing, sale, or use of the
11 products at issue results in the exposure of individuals to propoxur in amounts that would require
12 a warning under Proposition 65. *Id.* The Central Settling Defendants also contend that they have
13 scientific evidence to demonstrate that exposure to propoxur poses no significant risk within the
14 meaning of Health & Safety Code §25249.10(c). *Id.* NRDC contends it has evidence to the
15 contrary. *Id.*

16 After NRDC sent out its Notices, NRDC and the Central Settling Defendants engaged in
17 informal discovery and settlement negotiations. *Id.* To prevent prolonged litigation, including
18 extensive fact and expert discovery, NRDC and the Central Settling Defendants agreed to
19 compromise their disputed claims. The settlement agreement provides that NRDC waives and
20 releases all of its claims against the Central Settling Defendants that may arise from their acts
21 relating to the products covered by the settlement and relating to propoxur in any flea and tick
22 collar manufactured by Central, Farnam, or Wellmark. *Id.* ¶4.1. In exchange, Central, Farnam,
23 and Wellmark will provide a warning label on the covered flea-and-tick collars that states:
24 "NOTICE: This product contains propoxur, a chemical known to the State of California to cause
25 cancer." *Id.* ¶2.1. Those manufacturers will also cease distribution of products covered by this
26 lawsuit that do not contain such warning. *Id.* ¶2.2. Additionally, the retailers covered by the
27 settlement will remove from their shelves in California products manufactured by Central,
28 Farnam, or Wellmark covered by this lawsuit that do not contain a warning label. *Id.* ¶2.3.

1 The civil penalties under the settlement are set at \$80,000, and the reimbursement of
2 plaintiff's attorneys' fees and litigation costs and expenses is set at \$40,000. *Id.* ¶¶3.2, 3.3. The
3 civil penalties were calculated as a percentage of the profits of the Central Settling Defendants
4 based on sworn statements regarding their estimated profits. Weissglass Dec. ¶4. The attorneys'
5 fees are less than the fees incurred by NRDC for researching, investigating, and litigating the
6 case, which were calculated based on a lodestar representing the actual number of hours worked
7 multiplied by counsel's current market rates. *Id.* ¶10.

8 C. Sergeant's Settlement Agreement

9 NRDC and the Sergeant's Settling Defendants have reached a settlement of NRDC's
10 claims related to the manufacture, distribution and/or sale for use in California of certain flea-
11 and-tick collars manufactured by Defendant Sergeant's ("Sergeant's Settlement Agreement").
12 Weissglass Dec. Exh. B. The Sergeant's Settling Defendants are: Sergeant's; Albertsons, Inc.;
13 New Albertsons, Inc.; PETCO Animal Supplies Stores, Inc.; PetSmart, Inc.; PetSmart Store
14 Support Group, Inc.; Lee's Pet Club, Inc., d/b/a Pet Club Stores; Red Cart Market, Inc., d/b/a Pet
15 Club Stores; and Ralphs Grocery Co.

16 The Sergeant's Settlement Agreement covers flea-and-tick collars that Sergeant's
17 manufactures and sells pursuant to Registration Number 2517-61, which was issued to
18 Sergeant's by the United States Environmental Protection Agency ("EPA") under the Federal
19 Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. §136 *et seq.* ("Sergeant's
20 Registered Products"). Weissglass Dec., Exh. B ¶1.3. The agreement also covers flea-and-tick
21 collars carrying the Sergeant's brand name, but which are subject to FIFRA Registration
22 Numbers 2724-491 and 2724-493, which are held by Wellmark ("Wellmark Registered
23 Products"). *Id.* ¶1.4. Finally, the agreement covers certain products carrying the Zema brand
24 name ("Zema Products"). *Id.* ¶1.5.

25 The parties to the Sergeant's Settlement Agreement acknowledge that these covered
26 products contain or contained propoxur. Sergeant's asserts that it changed the packages for the
27 Sergeant's Registered Products to include Proposition 65 warning, and began shipping packaging
28 containing this warning into California in March 2008 (*id.* ¶1.3); that it began shipping the

1 Wellmark Registered Products with a Proposition 65 warning beginning in December 2009 (*id.*
2 ¶1.4); and that the Zema Products were discontinued in December 2008 and are no longer sold in
3 California (*id.* ¶1.5).

4 To prevent prolonged litigation, including extensive fact and expert discovery, NRDC
5 and the Sergeant's Settling Defendants agreed to compromise their disputed claims. The
6 settlement agreement provides that NRDC waives and releases all of its claims against the
7 Sergeant's Settling Defendants relating to the covered products arising from the alleged failure to
8 warn regarding the presence of propoxur in those products. *Id.* ¶1.9. In exchange, Sergeant's
9 agrees that all products covered by the agreement that are manufactured and/or shipped for
10 distribution to or sale in California after the agreement's effective date will carry a Proposition
11 65 warning. *Id.* ¶¶2.1, 2.2. The Sergeant's Settling Defendants, however, do not admit that any
12 violation of Proposition 65, and maintain that all covered products they have sold in California
13 and/or shipped for sale in California during the time periods relevant to NRDC's claims have
14 been and are in compliance with Proposition 65. *Id.* ¶1.9.

15 The Sergeant's Settlement Agreement provides for the payment of civil penalties in the
16 amount of \$16,292.53 and attorneys' fees, costs and expenses in the amount of \$13,703.47. *Id.*
17 ¶¶3.1.1, 3.1.2. The civil penalties were calculated as a percentage of the profits of the Sergeant's
18 Settling Defendants based on sworn statements regarding their estimated profits, and take into
19 account the steps taken toward providing warning. Weissglass Dec. ¶4. The settlement
20 agreement also provides for the payment of attorneys' fees, costs, and expenses that, when added
21 to the proposed payment from the Central Settling Defendants, are less than the fees incurred by
22 NRDC for researching, investigating, and litigating the case, and which were calculated based on
23 a lodestar representing the actual number of hours worked multiplied by counsel's current market
24 rates. *Id.* ¶10.

25 **III. ARGUMENT**

26 Health & Safety Code §25249.7(f)(4) requires parties to submit settlements of private
27 enforcement actions to the Court for approval by noticed motion. To approve a settlement, the
28 Court must make three statutory findings: (1) any required warning complies with Proposition

65; (2) any penalty is reasonable based on the statutory criteria; and (3) any attorneys' fees are reasonable. Health & Safety Code §25249.7(f)(4). Here, the settlement agreements' terms and conditions readily support these findings.

A. The Consent Judgments' Warnings Comply With Proposition 65

The consent judgments with the Central Settling Defendants and the Sergeant's Settling Defendants provide for warnings that comply with Proposition 65, as required by Health & Safety Code §25249.7(f)(4)(A). Proposition 65 requires a "clear and reasonable warning." *Id.* §25249.6. Pursuant to Proposition 65 regulations, a warning is sufficient when:

- (1) the text and appearance of the warning, along with a sufficient description of where the warning will appear in order to ascertain whether the warning will be "reasonably conspicuous" under the circumstances of purchase or use of the product; and (2) [there is] sufficient proof that the product causes exposure to a listed chemical to enable a finding that the warning would be truthful.

11 C.C.R. §3203(a).

Both the Central Settlement Agreement and the Sergeant's Settlement Agreement provide for warning labels that will be printed on the packaging of covered flea-and-tick collar products. These warning labels are "reasonably conspicuous" (11 C.C.R. §3203(a)), and comply with Proposition's requirement of a "clear and reasonable warning." Health & Safety Code §25249.6.²

B. The Stipulated Penalties Are Reasonable and Comply with Proposition 65

Proposition 65 provides a non-exclusive list of factors that are to be considered in assessing whether any amount of civil penalties is reasonable. These factors are (a) the nature and extent of the violations; (b) the number and severity of the violations; (c) the economic effect on the violator; (d) whether the violator took good faith measures to comply with Proposition 65 and the time those measures were taken; (e) the willfulness of the violator's misconduct; and (f)

² The Central Settlement Agreement requires that the products at issue will contain a warning label that states: "NOTICE: This product contains propoxur, a chemical known to the State of California to cause cancer." Weissglass Dec. Exh. A ¶2.1. The Sergeant's Settlement Agreement provides for warning labels stating: "NOTICE: This product contains a chemical (o-Isopropoxyphenyl methylcarbamate) (propoxur) known to the State of California to cause cancer"; and "Notice: This product contains propoxur, a chemical known to the State of California to cause cancer." *Id.* Exh. B ¶¶1.3, 1.4, 2.1, 2.2.

1 the deterrent effect on both the violator and the regulated community as a whole. Health &
2 Safety Code §25249.7(b)(2), (f).

3 The Central Settlement Agreement provides for \$80,000 in civil penalties, and the
4 Sergeant's Settlement Agreement provides for \$16,292.53 in civil penalties. Weissglass Dec.
5 Exh. A ¶3.2, Exh. B ¶3.1.1. The penalties shall be allocated between NRDC and the State of
6 California as provided by Health & Safety Code §25249.12(c)-(d), with NRDC's portion being
7 distributed to the Rose Foundation. *Id.*, Exh. A ¶3.2; *id.*, Exh. B ¶3.1.1. The amounts of these
8 civil penalties are reasonable and meet all the statutory criteria and considerations set forth
9 above.

10 The Central Settling Defendants and the Sergeant's Settling Defendants have provided
11 sworn declarations outlining the steps they have taken to provide warning labels and the
12 estimated profits they made from sales of the propoxur-containing flea collars subject to the
13 settlement agreements. Weissglass Dec. ¶4. The civil penalties provided for in both the Central
14 Settlement Agreement and Sergeant's Settlement Agreement were calculated as a percentage of
15 the profits of the settling Defendants, and take into account the steps taken toward providing
16 warning. *Id.*

17 The penalties also take into account Defendant manufacturers' actions in placing
18 Proposition 65 warning labels on the covered products. *Id.* With respect to the products covered
19 by the Central Settlement Agreement, the manufacturers have agreed to cease distribution of the
20 covered products not containing a Proposition 65 warning as soon as the proposed consent
21 judgment is approved and becomes the final order of the Court, and the retailers have agreed to
22 remove all covered products from sale in California by that same date. *Id.* Exh. A ¶¶2.2, 2.3.
23 The Sergeant's Settlement Agreement provides that Sergeant's will assure that all flea-and-tick
24 collars covered by that agreement and manufactured and/or shipped for distribution to or sale in
25 California on or after the agreement's effective date will contain a Proposition 65 warning. *Id.*
26 Exh. B. ¶2.1. Sergeant's further asserts that it began shipping some of the covered products to
27 California in March 2008 in packaging that contained Proposition 65 warnings; and that the
28 packaging of other covered products shipped to California contained Proposition 65 warnings
beginning in December 2009. *Id.* Exh. B ¶¶13, 14

1 Finally, the overall monetary relief demonstrates to the settling Defendants and other
2 regulated entities that they must be aware of and must comply with Proposition 65 in a timely
3 manner, but is not so severe that it will unduly impede the Defendants' business. In light of this,
4 the relationship of the penalties to the amount of profits earned on products sold in California
5 that did not contain Proposition 65 warnings, and the settling Defendants' actions to include
6 Proposition 65 warnings on the packaging of the covered flea-and-tick collars, the stipulated
7 amounts of the civil penalties are reasonable.

8 **C. The Stipulated Awards of Attorneys' Fees, Costs And Expenses Are**
9 **Reasonable**

10 The last factor for a court's consideration of a Proposition 65 settlement is whether the
11 proposed attorneys' fee award is "reasonable." The Central Settling Defendants have agreed to
12 reimburse NRDC for its reasonable attorneys' fees and litigation costs and expenses in the
13 amount of \$40,000; and the Sergeant's Settling Defendants have agreed to reimburse NRDC for
14 such fees, costs and expenses in the amount of \$13,703.47. Weissglass Dec. Exh. A ¶3.3, Exh. B
15 ¶3.1.2. For the reasons set forth below, these stipulated amounts are reasonable.

16 According to the Proposition 65 regulation regarding the award of attorneys' fees as part
17 of a settlement, the relevant inquiries for the Court are (1) whether the plaintiff was a "successful
18 party"; (2) whether the settlement confers a public benefit; (3) whether there was a necessity of
19 private enforcement; and (4) whether the fees are reasonable. 11 C.C.R. §3201(a)-(d).

20 NRDC seeks to recover its fees pursuant to Code of Civil Procedure §1021.5. The
21 guidelines for settlement of fee awards set forth in the Proposition 65 regulations "apply to
22 settlements under which the basis for a fee award is provided by Code of Civil Procedure section
23 1021.5." 11 C.C.R. §3201. The guidelines "are intended to be consistent with existing law
24 interpreting Code of Civil Procedure section 1021.5," and "provide assistance to the litigants and
25 the court in applying them to issues commonly arising under Proposition 65." *Id.*

26 Code of Civil Procedure §1021.5 provides in relevant part:

27 Upon motion, a court may award attorneys' fees to a successful party against one
28 or more opposing parties in any action which has resulted in the enforcement of
an important right affecting the public interest if: (a) a significant benefit, whether
pecuniary or nonpecuniary, has been conferred on the general public or a large

1 class of persons, (b) the necessity and financial burden of private enforcement, or
2 of enforcement by one public entity against another public entity, are such as to
3 make the award appropriate, and (c) such fees should not in the interest of justice
4 be paid out of the recovery, if any.

4 C.C.P. §1021.5. This statute codifies the “private attorney general” fee-shifting doctrine, and is
5 intended to encourage suits that benefit the public by awarding fees to the successful parties. *See*
6 *Woodland Hills Residents Ass’n v. City Council of Los Angeles* (1979) 23 Cal.3d 917, 933. The
7 doctrine recognizes that “privately initiated lawsuits are often essential to the effectuation of the
8 fundamental public policies embodied in . . . statutory provisions, and that, without some
9 mechanism authorizing the award of attorney fees, private actions to enforce such important
10 public policies will as a practical matter frequently be infeasible.” *Id.* Where, as here, the
11 amount of attorneys’ fees are part of a settlement, the Court may “apply[] a somewhat less
12 exacting review of each element of the fee claim than would be applied in a contested fee
13 application.” 11 C.C.R. §3201.

14 NRDC meets the criteria for attorneys’ fees awards under 11 C.C.R. §3201 and C.C.P.
15 §1021.5. First, NRDC was the “successful party” in this action. The Settling Defendants have
16 agreed to cease all sales of propoxur-containing flea collars in California without Proposition 65
17 warning labels.

18 Second, NRDC vindicated an “important right affecting the public interest,” and the
19 proposed consent judgments confer a public benefit. C.C.P. §1021.5; 11 C.C.R. §3201(b).
20 Ensuring that consumers know the potential risks of the products they buy is fundamental under
21 Proposition 65. Vindication of fundamental rights by definition benefits the public as a whole
22 and satisfies this factor. *See Folsom v. Butte County Ass’n of Gov’ts* (1982) 32 Cal.3d 668, 684
23 (substantial benefit implicit when lawsuit leads to implementation of fundamental legislative
24 policy); *Los Angeles Police Protective League v. City of Los Angeles* (1986) 188 Cal.App.3d 1,
25 13 (“What made the right ‘important’ in this particular instance also meant it conferred a
26 significant benefit on a large class of persons.”).

1 Third, "the necessity and financial burden of private enforcement . . . are such as to make
2 the award appropriate." C.C.P. §1021.5; *see also* 11 CCR §3201(c). No public prosecutor took
3 this case; the only reason it was brought was NRDC's commitment to enforce Proposition 65.

4 Finally, the stipulated amount of fees, costs and expenses provided for in the settlement
5 agreements is reasonable. 11 C.C.R. §3201(d). To determine the amount of a fee award for
6 work on the merits, the Court computes the lodestar by multiplying the number of hours
7 reasonably expended by each attorney by the reasonable hourly rate for that attorney's services.
8 *See, e.g., Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322. In this case, counsel kept
9 contemporaneous time records. Weissglass Dec. ¶9. NRDC seeks hourly rates for attorneys and
10 litigation assistants based on the current hourly billing rates used by Altshuler Berzon for
11 commercial clients. *Id.* ¶7. These rates are consistent with market rates in the San Francisco Bay
12 Area. *Id.* ¶¶7-8 & Exh. C. Multiplying the current hourly rates for each professional by the
13 number of hours that professional spent results in a lodestar greater than \$53,703.47. *Id.* ¶10.
14 Given that the lodestar, which does not include costs or litigation expenses, is more than the
15 combined settlement total of \$53,703.47 allocated to NRDC's attorneys' fees, costs, and
16 expenses, there can be no question that the stipulated amounts are reasonable.³

17 CONCLUSION

18 For the foregoing reasons, NRDC respectfully requests that the Court approve the
19 proposed consent judgments.

20 Dated: October 19, 2010

Respectfully submitted,

21 JONATHAN D. WEISSGLASS
22 BARBARA J. CHISHOLM
Altshuler Berzon LLP

23 MICHAEL E. WALL
Natural Resources Defense Council, Inc.

24
25 By: 

Jonathan Weissglass

26 Attorneys for Plaintiff NRDC
27

28 ³ There is also no recovery from which to pay NRDC's fees. *See* C.C.P. §1021.5.

1 **1. INTRODUCTION.**

2 **1.1 Plaintiff.** The Plaintiff is Natural Resources Defense Council, Inc. ("NRDC" or
3 "Plaintiff"), a non-profit environmental organization with more than 480,000 members
4 nationwide. NRDC is dedicated to, among other causes, protecting the environment, improving
5 human health, and supporting environmentally sound practices.

6 **1.2 Settling Defendants.** The Settling Defendants are Central Garden & Pet
7 Company; Inc. ("Central"); Farnam Companies, Inc. ("Farnam"); Petco Animal Supplies Stores,
8 Inc. ("Petco"); Drs. Foster & Smith, Inc. ("Foster & Smith"); Fins, Furs & Feathers, Inc. d/b/a
9 Petstore.com ("Petstore"); Ralphs Grocery Company ("Ralphs"); Jeffers, Inc. ("Jeffers"); KV Vet
10 Supply, Inc. ("KV"); Lee's Pet Club, Inc. d/b/a Pet Club Stores ("Pet Club"); Red Cart Market,
11 Inc. d/b/a Pet Club Stores ("Pet Club"); Orchard Supply Hardware LLC ("Orchard"); Pet Food
12 Express LTD; Petsmart Inc. ("Pet Food"); Petsmart Store Support Group, Inc. ("Petsmart"); and
13 Wellmark International. Inc. ("Wellmark").

14 **1.3 The Parties.** Plaintiff and Settling Defendants are sometimes referred to herein as
15 the "Parties."

16 **1.4 The Action.** This action ("Action") is brought under Proposition 65, the popular
17 name for California's Safe Drinking Water and Toxic Enforcement Act of 1986, *Cal. Health and*
18 *Safety Code* Section 25249.5 *et seq.* (sometimes referred to as "the Act"). Plaintiff proceeds
19 under Section 25249.7(d) as a "person in the public interest." Solely for purposes of this Consent
20 Judgment, the Parties stipulate that Plaintiff's Notices of Intent to Sue, listed as Exhibit A to this
21 Consent Judgment ("Plaintiff's Notices") were served upon Defendants and public prosecutors,
22 including the Attorney General and all district attorneys and city attorneys authorized to prosecute
23 an action to enforce the Act, accompanied by certificates of merit, in compliance with Section
24 25249.7(d)(1) of the Act. Plaintiff is allowed to proceed pursuant to Section 25249.7(d)(2),
25 because none of those public officials commenced an action pursuant to Plaintiff's Notices.

26 **1.5 The Complaint.** On December 7, 2009, Plaintiff filed a complaint against
27 Settling Defendants and others ("Defendants") in the Superior Court for the County of Alameda
28 ("Complaint") alleging that Defendants violated Proposition 65 by exposing individuals in

1 California to a chemical known as propoxur which has been designated under the Act as "known
2 to the State of California to cause cancer or reproductive toxicity" within the meaning of Section
3 25249.8(b) (the "Covered Chemical"), without providing Proposition 65 warnings to such
4 individuals, as alleged to be required under Section 25249.6. According to the Complaint, the
5 alleged exposures to the Covered Chemical occur when individuals in California place propoxur
6 containing flea and tick collars on dogs and cats and subsequently have contact with these
7 animals. These flea and tick collars are manufactured, packaged, distributed, marketed and/or
8 sold by Settling Defendants for use in California. These products are identified with specificity in
9 Plaintiff's Notices and the Complaint. For purposes of this Consent Judgment, "Covered
10 Products" shall refer to products manufactured, packaged, distributed, marketed or sold by
11 Defendants Central, Farnam and Wellmark, as identified in Plaintiff's Notices to these three
12 defendants and the retailer defendants who resold those products.

13 **1.6 Jurisdiction.** Solely for purposes of this Consent Judgment, the Parties stipulate
14 that the Court has personal jurisdiction over Settling Defendants as to the acts alleged in the
15 Action; that venue is proper in the County of Alameda; that the claims in the Action present a live
16 controversy as to the application of Proposition 65 to the Covered Products and the Covered
17 Chemical therein; that this Court has jurisdiction to enter this Consent Judgment as a resolution of
18 all claims relating to the Covered Products alleged in the Action against Settling Defendants; and
19 that the Court shall retain jurisdiction to implement the Consent Judgment.

20 **1.7 The Standard for Determining Whether Proposition 65 Warnings Are**
21 **Required.** Section 25249.6 of Proposition 65 provides that "[n]o person in the course of business
22 shall knowingly and intentionally expose any individual to a chemical known to the state to cause
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual, except as provided in Section 25429.10." Section 25249.10(c), under the heading
25 "Exemptions from Warning Requirement," provides that Section 25249.6 "shall not apply" to an
26 "exposure for which the person responsible can show that the exposure poses no significant risk
27 assuming lifetime exposure at the level in question for substances known to the state to cause
28 cancer, and that the exposure will have no observable effect assuming exposure at one thousand

1 (1000) times the level in question for substances known to the state to cause reproductive toxicity,
2 based on evidence and standards of comparable scientific validity to the evidence and standards
3 which form the scientific basis for the listing of such chemical In any action brought to
4 enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this
5 subdivision shall be on the defendant.” Proposition 65 thus makes it unlawful for a person
6 subject to the Act to expose an individual in California to a Proposition 65-listed chemical
7 without first providing a Proposition 65 warning unless an exemption to this requirement applies.
8 Where the defendant asserts an exemption because the alleged exposure is beneath the level that
9 would require a warning, the burden of proof is on the defendant to establish that the exemption
10 applies.

11 **1.8 Settlement.** After Plaintiff’s Notices were issued, the Parties began engaging in
12 informal discovery and have been engaged in extensive negotiations almost continually since that
13 time. As a result of this exchange of information, the Parties agree on some aspects of the
14 allegations, but disagree as to several other aspects, and thus disagree as to whether Settling
15 Defendants have violated Proposition 65. Specifically, the Parties agree that each of the Covered
16 Products contains the Covered Chemical, and that the Settling Defendants did not include
17 Proposition 65 warnings with respect to the Covered Products for some period of time within one
18 year of the filing of the Complaint. The Settling Defendants dispute, however, that the
19 manufacture, packaging, distribution, marketing, sale or use of the Covered Products results in the
20 exposure of individuals in California (or elsewhere) to the Covered Chemical in amounts, if any,
21 that would require a warning under Proposition 65. Settling Defendants contend they began the
22 required applications to change labels prior to Plaintiff’s 60 Day Notices in this case. Settling
23 Defendants also assert other affirmative defenses. Settling Defendants contend that they have
24 scientific evidence to demonstrate that any exposure to the Covered Chemical that results from
25 any reasonably anticipated use of the Covered Products, in the words of Section 25249.10(c),
26 “poses no significant risk assuming lifetime exposure at the level in question for substances
27 known to the state to cause cancer, and that the exposure will have no observable effect assuming
28 exposure at one thousand (1000) times the level in question for substances known to the state to

1 cause reproductive toxicity, based on evidence and standards of comparable scientific validity to
2 the evidence and standards which form the scientific basis for the listing of such chemical”
3 Plaintiff disputes Settling Defendants’ assertions. In support of its position, Plaintiff contends it
4 has evidence to dispute Settling Defendants’ contention with respect to the Covered Chemical and
5 Covered Products, and asserts that this evidence also demonstrates that Settling Defendants’
6 evidence with respect to the Covered Chemical and Covered Products does not satisfy Settling
7 Defendant’s burden under Section 25249.6. Therefore, in order to avoid prolonged litigation and
8 the waste of private and judicial resources that would arise from prosecuting, defending, and
9 adjudicating the issues of which the Plaintiff and Settling Defendants disagree, the Parties have
10 agreed, subject to the approval of the Court to compromise their disputed claims and defenses,
11 and entered into a settlement agreement, the terms of which are embodied in this Consent
12 Judgment.

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

1 **2. INJUNCTIVE RELIEF.**

2 In the spirit of settlement and compromise, and in order to promote the public interest,
3 Settling Defendants have agreed to continue to take certain measures to enhance the safe use of
4 Covered Products by providing a notice as described hereinafter. The Parties have agreed to
5 these measures with the mutual understanding and expectation that as to such Covered Products,
6 such measures will provide notice so as to mitigate potential individual exposure to the Covered
7 Chemical. Each Settling Defendant is only responsible under this Consent Judgment for
8 measures specifically agreed to by that Party below and has no obligation to ensure compliance
9 by any other Party.

10 **2.1** Central, Farnam and Wellmark have agreed to the following measures with respect
11 to the Covered Products:

12 Subject to paragraph 2.2 of this Consent Judgment, Central, Farnam and Wellmark state
13 that they have changed the precautionary statements on the label for the Covered Products, that
14 may be marketed for use in California, to include the following statement:

15 NOTICE: This product contains propoxur, a chemical known to the
16 State of California to cause cancer.

17 **2.2** Central, Farnam and Wellmark have agreed to take such actions as may be
18 necessary to cease their distribution of Covered Products not containing a Proposition 65 warning
19 statement (such as that delineated in Section 2.1) to distributors or retailers in California
20 following notice that this Consent Judgment has been approved and has become a final order of
21 the Court ("Effective Date"); provided, in no event shall said Defendants be deemed in violation
22 of this Consent Judgment or Proposition 65 where Covered Products not containing a Proposition
23 65 warning statement (such as that delineated in Section 2.1) were distributed or sold by said
24 Defendants before the Effective Date (even if stocked in shelves, sold to consumers, or otherwise
25 within the chain of distribution after the Effective Date.)

26 **2.3** Defendants Petco, Foster & Smith, Petstore, Ralphs, Jeffers, KV, Pet Club,
27 Orchard, Pet Food, and Petsmart agree they will remove any and all Covered Products not
28 containing a Proposition 65 warning statement (such as that delineated in Section 2.1) which were

1 manufactured, sold, distributed, or packaged by Central, Farnam and Wellmark, from sale in
2 California by no later than the Effective Date.

3 **3. MONETARY PAYMENTS.**

4 **3.1** In settlement of this matter, Settling Defendants collectively have agreed to make
5 the monetary payments totaling \$120,000, as described in paragraphs 3.2 and 3.3 below.

6 **3.2 Civil Penalties.** Within thirty (30) days following notice of approval and entry of
7 this Consent Judgment by the Court, Settling Defendants shall pay \$80,000 representing Civil
8 Penalties, and shall do so in the form of a check made payable to the Altshuler Berzon LLP
9 Attorney-Client Trust Account, to be delivered to Plaintiff's counsel of record at 177 Post Street,
10 Suite 300, San Francisco, California 94108. This amount shall be allocated between NRDC and
11 the State of California as directed by Health and Safety Code Section 25249.12(c)-(d). NRDC's
12 portion shall be distributed to the Rose Foundation.

13 **3.3 Reimbursement of Attorneys Fees and Costs.** Within thirty days (30) following
14 notice of approval and entry of this Consent Judgment, Settling Defendants shall pay \$40,000 as
15 reimbursement for the investigation fees and costs, testing costs, expert witness fees, attorneys
16 fees, and other litigation costs and expenses, and shall do so in the form of a check made payable
17 to the Altshuler Berzon LLP Attorney-Client Trust Account, to be delivered to Plaintiff's counsel
18 of record at 177 Post Street, Suite 300, San Francisco, California 94108.

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

20 **4.1 Waiver And Release Of Claims Against Settling Defendants.** As to those
21 matters raised or which could have been raised in this Action, the Complaint, or in Plaintiff's
22 Notices (and without regard to any potential disputes about the adequacy of such Notices), as to
23 Covered Products and Covered Chemical for Central, Farnam and Wellmark and as to the
24 Covered Products as to Defendants, Petco, Foster & Smith, Petstore, Ralphs, Jeffers, KV, Petclub,
25 Orchard, Petfood and Petsmart, and any related actions, Plaintiff, on behalf of itself and (to the
26 extent permitted by law) on behalf of the general public, hereby releases Settling Defendants and
27 waives any claims against Settling Defendants for injunctive relief or damages, penalties, fines,
28 sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or

1 any other sum incurred or claimed, for any claims under Proposition 65 or any related actions
2 arising from the marketing, sale, packaging, distribution or use in California of the Covered
3 Products, including all claims that may arise from the acts relating to the Covered Products and
4 the Covered Chemical in any flea and tick collar manufactured by Central, Farnam or Wellmark.
5 It is expressly understood that this waiver does not apply to flea and tick collars containing
6 propoxur not manufactured, distributed, sold or packaged by Central, Farnam, Wellmark or their
7 subsidiaries or affiliates.

8 **4.2 Defendants' Waiver And Release Of Plaintiff.** Settling Defendants hereby
9 release Plaintiff from and waive any claims against Plaintiff for injunctive relief or damages,
10 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
11 expenses, or any other sum incurred or claimed or which could have been claimed for matters
12 related to the Action or in action RG09448605.

13 **4.3 Matters Covered By This Consent Judgment/Release of Future Claims.** This
14 Consent Judgment is a full, final, and binding resolution between the Plaintiff, acting on behalf of
15 itself and on behalf of the general public in the public interest pursuant to Health and Safety Code
16 Section 25249.7(d), and Central, Farnam Wellmark, and the other Settling Defendants, as to all
17 claims arising from Settling Defendants' alleged failure to provide clear, reasonable, and lawful
18 warnings of exposure to the Covered Chemical in Covered Products. Compliance with the terms
19 of this Consent Judgment resolves any issues, now and in the future, concerning compliance by
20 the Settling Defendants with existing requirements of Proposition 65 with respect to the Covered
21 Products and the Covered Chemical in any flea and tick collar manufactured by Central, Farnam
22 or Wellmark.

23 **4.4 Waiver of Civil Code Section 1542.** Subject to Sections 4.1 and 4.3 above, this
24 Consent Judgment is intended as a full settlement and compromise of all claims arising out of or
25 relating to the Plaintiffs' Notices and/or the Action regarding Covered Products, except as set
26 forth herein. No other claim is reserved as between the Parties hereto, and each Party expressly
27 waives any and all rights which it may have under the provisions of Section 1542 of the Civil
28 Code of the State of California, which provides:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF
4 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
5 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
6 SETTLEMENT WITH THE DEBTOR.

7 4.5 For purposes of this section 4, the terms "Plaintiff" and "Settling Defendants" are
8 defined as follows. The term "Plaintiff" includes the Plaintiff as defined at paragraph 1.1 above,
9 and also includes its subsidiaries, successors, and assigns and its directors, officers, agents,
10 attorneys, representatives, and employees. The term "Settling Defendants" includes the Settling
11 Defendants, as that term is defined in paragraph 1.2 above, and also includes their corporate
12 affiliates, including any and all corporate parents and subsidiaries and their directors, officers,
13 agents, attorneys, representatives, employees, licensors, heirs, predecessors, successors, and
14 assigns, their suppliers, distributors and customers.

15 **5. ENFORCEMENT OF CONSENT JUDGMENT.**

16 5.1 The Parties may, by motion or other application before this Court, and upon notice
17 having been given to all Parties in accordance with paragraph 8 below, unless waived, enforce the
18 terms and conditions of this Consent Judgment and seek whatever fines, costs, penalties, or
19 remedies are provided by law. The prevailing party on any such motion or application shall be
20 entitled to recover reasonable attorneys' fees and costs.

21 5.2 The Parties may enforce the terms and conditions of this Consent Judgment
22 pursuant to paragraph 5.1 only after the complaining party has first given 30 days notice to the
23 Party allegedly failing to comply with the terms and conditions of the Consent Judgment and has
24 attempted, in an open and good faith manner, to resolve such party's alleged failure to comply.

25 **6. GOVERNING LAW.**

26 6.1 The terms of this Consent Judgment shall be governed by, and construed in
27 accordance with, the laws of the State of California.

28 6.2 The Parties have participated jointly in the preparation of this Consent Judgment
and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment
was subject to revision and modification by the Parties and has been accepted and approved as to

1 its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing
2 in this Consent Judgment shall not be interpreted against any party as a result of the manner in
3 which this Consent Judgment was prepared. Each Party to this Consent Judgment agrees that any
4 statute or rule of construction providing that ambiguities are to be resolved against the drafting
5 party should not be employed in the interpretation of this Consent Judgment and, in this regard,
6 the Parties hereby waive the application of California Civil Code Section 1654.

7 **7. ENTIRE AGREEMENT.**

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

19 **8. NOTICES.**

20 All notices or correspondence to be given pursuant to this Consent Judgment shall be in
21 writing and shall be personally delivered or sent by first-class, registered, certified mail, overnight
22 courier, and/or via facsimile transmission (with presentation of facsimile transmission
23 confirmation) addressed to the Parties as follows:

24 For Plaintiff: Altshuler Berzon LLP
25 Attn: Jonathan Weissglass
26 1777 Post Street, Suite 200
San Francisco, CA 94108

27 For Settling Defendants: Wendel, Rosen, Black & Dean LLP
28 Attn: Daniel Rapaport
1111 Broadway, 24th Floor
Oakland, CA 94607

1 The contacts and/or addresses above may be amended by giving notice to all Parties to this
2 Consent Judgment.

3 **9. COURT APPROVAL.**

4 The Court shall either approve or disapprove of this Consent Judgment in its entirety,
5 without alteration, deletion or amendment, unless otherwise so stipulated by the Parties and their
6 counsel. The Parties agree that they will fully support the approval of this Consent Judgment and
7 that they will act in good faith to encourage its approval by the Court.

8 Plaintiff will prepare and file a motion to approve this consent Judgment in full, and shall
9 take all reasonable measures to ensure that it is entered without delay. In the event that the Court
10 declines to approve and order entry of the Consent Judgment without any change whatsoever, this
11 Consent Judgment shall become null and void upon the election of either party and upon written
12 notice to all of the Parties to the Action pursuant to the notice provisions herein (unless the Parties
13 stipulate otherwise, in writing).

14 If the Court enters this Consent Judgment, Plaintiff shall, within 10 working days
15 thereafter, electronically provide or otherwise serve a copy of it and the report required pursuant
16 to 11 Cal. Code Regs. §3004 to/on the California Attorney General's Office.

17 **10. AUTHORIZATION.**

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

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11. COUNTERPARTS/FACSIMILE SIGNING.

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

Dated: _____ CENTRAL GARDEN & PET COMPANY, INC.
Michael A. Reed
(Signature)
MICHAEL A. REED
(Name)
EXECUTIVE VICE PRESIDENT
(Title)

Dated: July 21, 2010 FARNAM COMPANIES, INC.
Harry G. Harrison
(Signature)
Harry G. Harrison
(Name)
Assistant Secretary
(Title)

Dated: _____ PETCO ANIMAL SUPPLIES STORES, INC.

(Signature)

(Name)

(Title)

*Inventory Case
Wash, Room, Black + Deer LLP
510 834 1978*

1 **11. COUNTERPARTS/FACSIMILE SIGNING.**

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3 be deemed an original, and all of which, when taken together, shall constitute one and the same
4 document. All signatures need not appear on the same page of the document and signature of the
5 Parties transmitted by facsimile shall be deemed binding.

6 Dated: _____

CENTRAL GARDEN & PET COMPANY, INC.

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(Signature)


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Dated: July 21, 2010

FARNAM COMPANIES, INC.



(Signature)

Barry G. Harrison

(Name)

Assistant Secretary

(Title)

Dated: _____

PETCO ANIMAL SUPPLIES STORES, INC.

(Signature)

(Name)

(Title)

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Dated: _____ **CENTRAL GARDEN & PET COMPANY, INC.**

(Signature)

(Name)

(Title)

Dated: _____ **FARNAM COMPANIES, INC.**

(Signature)

(Name)

(Title)

Dated: August 11, 2012 **PETCO ANIMAL SUPPLIES STORES, INC.**
Darragh J. Davis
(Signature)
DARRAGH J. DAVIS
(Name)
VP and General Counsel
(Title)

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Dated: 7/19/2010

DRS. FOSTER & SMITH, INC.

John Powers
(Signature)
JOHN POWERS
(Name)
VICE PRESIDENT
(Title)

Dated: _____

FINS, FURS & FEATHERS, INC. d/b/a/
PETSTORE.COM

(Signature)

(Name)

(Title)

Dated: _____

RALPHS GROCERY COMPANY

(Signature)

(Name)

(Title)

Dated: _____

JEFFERS, INC.

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DRS. FOSTER & SMITH, INC.

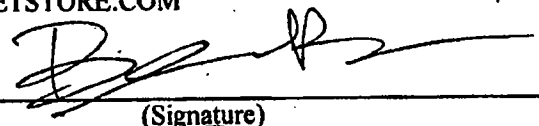
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Dated: 8-3-2010

FINS, FURS & FEATHERS, INC. d/b/a/
PETSTORE.COM



(Signature)

BENJAMIN ROS

(Name)

DIRECTOR OF OPERATIONS

(Title)

Dated: _____

RALPHS GROCERY COMPANY

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Dated: _____

JEFFERS, INC.

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FINS, FURS & FEATHERS, INC. d/b/a/
PETSTORE.COM

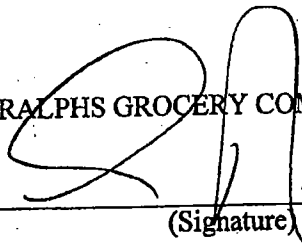
(Signature)

(Name)

(Title)

Dated: 7/23/10

RALPHS GROCERY COMPANY



(Signature)

Steven J. Prough

(Name)
Vice President and
Assistant Secretary

(Title)

Dated: _____

JEFFERS, INC.

(Signature)

(Name)

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Dated: _____

DRS. FOSTER & SMITH, INC.

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(Name)

(Title)

Dated: _____

FINS, FURS & FEATHERS, INC. d/b/a/
PETSTORE.COM

(Signature)

(Name)

(Title)

Dated: _____

RALPHS GROCERY COMPANY

(Signature)

(Name)

(Title)

Dated: _____

JEFFERS, INC.

Dorothy Jeffers

(Signature)

Dorothy JEFFERS

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Dated: 7/16/2010

KV VET SUPPLY, INC.

Tracie A. Lloyd
(Signature)

Tracie A. Lloyd
(Name)

General Manager
(Title)

Dated: _____

LEE'S PET CLUB, INC. d/b/a PET CLUB STORES

(Signature)

(Name)

(Title)

Dated: _____

RED CART MARKET, INC. d/b/a PET CLUB STORES

(Signature)

(Name)

(Title)

Dated: _____

ORCHARD SUPPLY HARDWARE LLC

(Signature)

(Name)

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Dated: _____

KV VET SUPPLY, INC.

(Signature)

(Name)

(Title)

Dated: 7.14.2010

LEE'S PET CLUB, INC. d/b/a PET CLUB STORES

Tamm Lee

(Signature)

TAMM LEE

(Name)

SECRETARY

(Title)

Dated: 7.14.2010

RED CART MARKET, INC. d/b/a PET CLUB STORES

Tamm Lee

(Signature)

TAMM LEE

(Name)

VICE PRESIDENT

(Title)

Dated: _____

ORCHARD SUPPLY HARDWARE LLC

(Signature)

(Name)

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Dated: _____

KV VET SUPPLY, INC.

(Signature)

(Name)

(Title)

Dated: _____

LEE'S PET CLUB, INC. d/b/a PET CLUB STORES

(Signature)

(Name)

(Title)

Dated: _____

RED CART MARKET, INC. d/b/a PET CLUB STORES

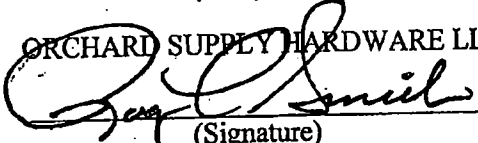
(Signature)

(Name)

(Title)

Dated: 7/21/10

ORCHARD SUPPLY HARDWARE LLC


(Signature)

ROGER L. SMITH
(Name)

VP REAL ESTATE, GEN'L COUNSEL
(Title) & SECRETARY

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Dated: 7/15/2010

PET FOOD EXPRESS LTD

(Signature)
Michael Levy

(Name)
President

(Title)

Dated: _____

PETSMART INC.

(Signature)

(Name)

(Title)

Dated: _____

PETSMART STORE SUPPORT GROUP, INC.

(Signature)

(Name)

(Title)

Dated: _____

WELLMARK INTERNATIONAL, INC.

(Signature)

(Name)

(Title)

Dated: _____

NATURAL RESOURCES DEFENSE COUNCIL, INC.

(Signature)

(Name)

(Title)

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Dated: _____

PET FOOD EXPRESS LTD

(Signature)

(Name)

(Title)

Dated: _____

PETSMART INC

J. Dale Brunk
(Signature)

J. Dale Brunk
(Name)

Vice President / Deputy Gen. Counsel
(Title)

Dated: _____

PETSMART STORE SUPPORT GROUP, INC.

J. Dale Brunk
(Signature)

J. Dale Brunk
(Name)

Vice President / Deputy General Counsel
(Title)

Dated: _____

WELLMARK INTERNATIONAL, INC.

(Signature)

(Name)

(Title)

Dated: _____

NATURAL RESOURCES DEFENSE COUNCIL,
INC.

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PETSMART STORE SUPPORT GROUP, INC.

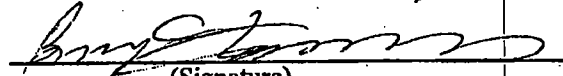
(Signature)

(Name)

(Title)

Dated: July 21, 2010

WELLMARK INTERNATIONAL, INC.



(Signature)

Barry G. Harrison

(Name)

Assistant Secretary

(Title)

Dated: _____

NATURAL RESOURCES DEFENSE COUNCIL,
INC.

(Signature)

(Name)

(Title)

1 Dated: _____

PET FOOD EXPRESS LTD

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Dated: _____

PETSMART INC.

(Signature)

(Name)

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Dated: _____

PETSMART STORE SUPPORT GROUP, INC.

(Signature)

(Name)

(Title)

Dated: _____

WELLMARK INTERNATIONAL, INC.

(Signature)

(Name)

(Title)

Dated: July 26, 2010

NATURAL RESOURCES DEFENSE COUNCIL, INC.

Jim Blum

(Signature)

Gina Solomon, MD, MPH

(Name)

Senior Scientist

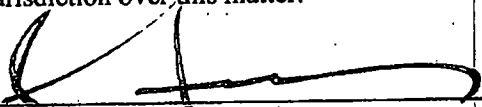
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IT IS SO ORDERED:

In accordance with the stipulation of Plaintiff and Settling Defendants, the Court hereby incorporates the terms of this Consent Judgment into this Order. If a party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: DEC 14, 2010



Judge of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

NATURAL RESOURCES DEFENSE
COUNCIL,

Plaintiff,

v.

PETCO ANIMAL SUPPLIES STORES, INC., *et*
al.,

Defendants.

Case No. RG09487873

**CONSENT JUDGMENT WITH
SERGEANT'S PET CARE PRODUCTS,
INC. AND RELATED RETAILER
DEFENDANTS**

Date:
Time:
Dept: 20
Judge: Hon. Robert Freedman
Complaint Filed: April 23, 2009

1. INTRODUCTION

1.1 On December 2, 2009, Plaintiff Natural Resources Defense Council ("NRDC") filed a complaint (the "Complaint") initiating this action (the "Action") for civil penalties and injunctive relief in the Superior Court for the County of Alameda. The Complaint named several defendants, including Sergeant's Pet Care Products, Inc. ("Sergeant's) and several retailers, and alleged that each had manufactured, distributed, and/or sold flea and tick collars containing the chemical propoxur (the "Products") in California. The Complaint further alleges that under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and reasonable warning" before exposing individuals to propoxur, and that the defendants failed to do so.

1 1.2 Sergeant's is a corporation that employs more than 10 persons, and at some time
2 relevant to the allegations of the Complaint manufactured Products, and shipped Products for sale in
3 California.

4 1.3 Sergeant's manufactures and sells certain Products pursuant to Registration Number
5 2517-61, issued to Sergeant's by the United States Environmental Protection Agency ("EPA") under
6 the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq.*
7 ("Sergeant's Registered Products"). Registration Number 2517-61 sets forth the language and
8 information that can appear on the label of a Registered Product. EPA has reviewed and approved an
9 amendment to Registration Number 2517-61 that allows the packaging for the Registered Products to
10 carry the following Proposition 65 warning:

11 NOTICE: This product contains a chemical (o-Isopropoxyphenyl
12 methylcarbamate) (propoxur) known to the State of California to cause
13 cancer.

14 (the "Sergeant's Warning"). Sergeant's asserts that it changed the packages for the Sergeant's
15 Registered Products to include this warning language, and began shipping packaging containing the
16 Sergeant's Warning into California in March 2008.

17 1.4 Other Products carrying the Sergeant's brand name are covered under FIFRA
18 Registration Numbers 2724-491 and 2724-493, which are held by Wellmark International, another
19 defendant to this Action (the "Wellmark Registered Products"). Sergeant's requested that Wellmark
20 International, as the registrant for Registration Numbers 2724-491 and 2724-493, seek amendment of
21 its registration to allow Sergeant's to include the Warning on the Wellmark Registered Products. In
22 December 2009, after it received confirmation that Wellmark International had done so, Sergeant's
23 began shipping the Wellmark Registered Products with the following Proposition 65 warning:

24 Notice: This product contains propoxur, a chemical known to the State
25 of California to cause cancer.

26 (the "Wellmark Warning"). Sergeant's asserts that, as of the Effective Date of this Consent
27 Judgment, all Sergeant's Registered Products and Wellmark Registered Products shipped by
28 Sergeant's carry the Sergeant's Warning or the Wellmark Warning.

1 1.5 Sergeant's asserts that products carrying the "Zema" brand name that were formerly
2 sold in California (the "Zema Products"), were discontinued in December 2008.

3 1.6 Sergeant's Registered Products, Wellmark Registered Products, and Zema Products
4 are hereinafter sometimes collectively referred to as the "Covered Products."

5 1.7 Albertsons, Inc., New Albertsons, Inc., PETCO Animal Supplies Stores, Inc.,
6 Petsmart, Inc., PetSmart Store Support Group, Inc., Lee's Pet Club, Inc., d/b/a Pet Club Stores, Red
7 Cart Market, Inc., d/b/a Pet Club Stores, and Ralphs Grocery Co. are retailers named as defendants in
8 the Complaint that sold and/or sell Covered Products. For purposes of this Consent Judgment, these
9 defendants, only to the extent they sold and/or sell Covered Products, are referred to collectively as
10 "Retailers."

11 1.8 For purposes of this Consent Judgment only, NRDC, Sergeant's and the Retailers
12 (collectively, the "Parties") stipulate that this Court has jurisdiction over the allegations of violations
13 contained in the Complaint and personal jurisdiction over Sergeant's and the Retailers as to the acts
14 alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has
15 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or
16 could have been raised against Sergeant's and the Retailers in the Complaint based on the facts
17 alleged therein.

18 1.9 Except as expressly set forth herein, NRDC, Sergeant's and the Retailers enter into
19 this Consent Judgment as a full and final settlement of all claims relating to the Covered Products
20 arising from the alleged failure to warn regarding the presence of propoxur in such Covered Products.
21 Sergeant's and the Retailers deny the material factual and legal allegations contained in the
22 Complaint and maintain that all Covered Products they have sold in California and/or shipped for sale
23 in California at all times relevant to the Complaint have been and are in compliance with all laws.
24 Nothing in this Consent Judgment, including Sergeant's and the Retailers' execution of the Consent
25 Judgment and agreement to provide the relief and remedies specified herein, shall be construed as an
26 admission by Sergeant's or the Retailers of any fact, finding, issue of law, or violation of law, nor
27 shall compliance with this Consent Judgment constitute or be construed as an admission by
28 Sergeant's or the Retailers of any fact, finding, conclusion, issue of law, or violation of law, such

1 being specifically denied by Sergeant's and the Retailers. This Consent Judgment shall not be
2 admissible in any action or proceeding except for proceedings to enforce or modify this Consent
3 Judgment as set forth herein. However, this Paragraph shall not diminish or otherwise affect
4 Sergeant's and the Retailers' obligations, responsibilities and duties to comply with this Consent
5 Judgment.

6 1.10 The effective date of this Consent Judgment shall be the date on which the Consent
7 Judgment is entered as a judgment by the Superior Court ("Effective Date").

8 2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS

9 2.1 Sergeant's shall assure that Covered Products manufactured and/or shipped for
10 distribution to or sale in California on or after the Effective Date carry a warning, the language,
11 location, and appearance of which is substantially similar to the Sergeant's Warning or the Wellmark
12 Warning, consistent with Proposition 65 and the requirements of applicable FIFRA registrations
13 issued by the EPA.

14 2.2 Beginning on the Effective Date, Sergeant's agrees that it shall not manufacture,
15 distribute, or sell in California any Product pursuant to a FIFRA registration held by another
16 individual or entity unless such FIFRA registration allows the inclusion of a Proposition 65 warning
17 that is substantially similar in content and form to that set forth in section 2.1 of this Consent
18 Judgment.

19 3. SETTLEMENT PAYMENTS

20 3.1 Sergeant's shall pay to NRDC the collective sum of \$30,000 as settlement proceeds
21 ("Settlement Proceeds"). Settlement Proceeds shall be made payable to the Altshuler Berzon LLP
22 Attorney-Client Trust Account and delivered to Altshuler Berzon LLP, at 177 Post Street, Suite 300,
23 San Francisco, CA 94108, within ten (10) business days after the Effective Date, and shall be applied
24 as follows:

25 3.1.1 Civil Penalty: Sergeant's shall pay civil penalties pursuant to Health & Safety
26 Code section 25249.12 in the amount \$16,292.53. This amount shall be allocated between NRDC
27 and the State of California as directed by Health & Safety Code section 25249.12(c)-(d). NRDC's
28 portion shall be distributed to the Rose Foundation.

1 **3.1.2 Attorneys' Fees and Costs:** \$13,703.47 shall be paid to reimburse NRDC for
2 attorneys' fees and costs incurred by NRDC in litigating this matter as to the Covered Products and
3 negotiating this Consent Judgment on behalf of itself and the general public. Sergeant's and the
4 Retailers agree to bear their own attorneys' fees, expenses and costs associated with this Action and
5 with *NRDC v. Albertsons, Inc., et al.*, Alameda County Superior Court Case No. RG 09448605.

6 **4. MODIFICATION OF CONSENT JUDGMENT**

7 **4.1** This Consent Judgment may be modified by written agreement of the Parties after
8 noticed motion and upon entry of a modified consent judgment by the Court thereon, or upon motion
9 of either Party as provided by law and upon entry of a modified consent judgment by the Court.
10 Before filing an application with the Court for a modification to this Consent Judgment, the moving
11 Party shall meet and confer with the other Party to determine whether the other Party will consent to
12 the proposed modification, and shall submit any proposed modification to the California Attorney
13 General for comment. If a proposed modification is agreed upon between the Parties, then the Parties
14 will jointly present the modification to the Court by means of a stipulated modification to the Consent
15 Judgment.

16 **4.2 Regulatory Requirements.**

17 Sergeant's shall notify NRDC in the event that a change to any state or federal statute or
18 regulation governing the Covered Products or to the FIFRA registration for any Covered Product
19 requires a change to the language or placement of the warnings required described in sections 1.3 and
20 1.4. Where such changes are (1) nonmaterial, or (2) are imposed by the EPA but not requested by
21 Sergeant's, the Parties shall stipulate that this Consent Judgment will be modified to correspond to
22 such new requirement. Any other modification of the warnings will be governed by section 4.1.

23 **4.3 Other Settlements.**

24 **4.3.1** If NRDC agrees or has agreed in a settlement or judicially entered consent
25 judgment with Wellmark or any other defendant to this Action that allows a Product to be shipped for
26 sale and/or sold in California without a Proposition 65 warning; then the Parties shall stipulate that
27 this Consent Judgment will be modified to correspond to such terms as provided in such other
28 settlement or judicially entered consent judgment.

1 4.3.2 If NRDC agrees or has agreed in a settlement or judicially entered consent
2 judgment that some or all Products (as sold by other companies) do not require a warning under
3 Proposition 65 (based on the presence of propoxur), or if a court of competent jurisdiction renders a
4 final judgment and the judgment becomes final, that some or all Products (as sold by other
5 companies) do not require a warning for propoxur under Proposition 65, Sergeant's may seek a
6 modification of this Consent Judgment to eliminate its duty to warn.

7 **5. ENFORCEMENT**

8 5.1 NRDC may, after meeting and conferring with Sergeant's and/or the Retailers, by
9 motion or application for an order to show cause before this Court, enforce the terms and conditions
10 contained in this Consent Judgment against Sergeant's and/or the Retailers. In any such proceeding,
11 NRDC may seek whatever fines, costs, penalties, or remedies are provided by law for failure to
12 comply with the Consent Judgment and where said violations of this Consent Judgment constitute
13 subsequent violations of Proposition 65 or other laws independent of the Consent Judgment and/or
14 those alleged in the Complaint, NRDC is not limited to enforcement of the Consent Judgment, but
15 may seek in another action whatever fines, costs, penalties, or remedies are provided for by law for
16 failure to comply with Proposition 65 or other laws. In any action brought by NRDC alleging
17 subsequent violations of Proposition 65 or other laws, Sergeant's and/or the Retailers may assert any
18 and all defenses that are available.

19 **6. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

20 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
21 Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
22 Consent Judgment on behalf of the Party represented and legally to bind that party.

23 **7. CLAIMS COVERED**

24 This Consent Judgment is a full, final, and binding resolution between the Parties of any
25 violation of Proposition 65 or its implementing regulations or any other statutory or common law
26 claims that have been or could have been asserted in the Complaint against Sergeant's and the
27 Retailers for failure to provide clear and reasonable warnings of exposure to propoxur from the use of
28 the Covered Products, or any other claim that was or could have been raised based on the facts or

1 conduct alleged in the Complaint as to such Covered Products. As to the Covered Products,
2 compliance with the terms of this Consent Judgment resolves any issue now, in the past, and in the
3 future concerning compliance by Sergeant's, its parents, shareholders, divisions, subdivisions,
4 subsidiaries, sister companies, affiliates, cooperative members, licensees, agents and representatives,
5 and the distributors, brokers, wholesalers, retailers, or other entities who sell or formerly
6 manufactured or sold Covered Products; and the officers, directors, employees, attorneys, agents,
7 representatives, predecessors, successors, and assigns of any of them, with the requirements of
8 Proposition 65 and its implementing regulations.

9 **8. RETENTION OF JURISDICTION**

10 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

11 **9. PROVISION OF NOTICE**

12 **9.1** When any Party is entitled to receive any notice under this Consent Judgment, the
13 notice shall be sent by overnight courier service to the person and address set forth in this Paragraph.
14 Any party may modify the person and address to whom the notice is to be sent by sending each other
15 party notice by certified mail, return receipt requested. Said change shall take effect for any notice
16 mailed at least five days after the date the return receipt is signed by the party receiving the change.

17 **9.2** Notices shall be sent by First Class Mail and/or overnight delivery to the following
18 when required:

19 For NRDC:

20 Jonathan Weissglass, Esq.
21 Altshuler Berzon LLP
22 177 Post Street, Suite 300
23 San Francisco, CA 94108

24 For Sergeant's and the Retailers:

25 Michèle B. Corash, Esq.
26 Morrison & Foerster LLP
27 425 Market Street
28 San Francisco, CA 94105

Kelly N. Pleas
Legal Affairs Manager
Sergeant's Pet Care Products, Inc.
2625 South 158th Plaza
Omaha NE 68130

1 **10. COURT APPROVAL**

2 **10.1** NRDC agrees to comply with the reporting requirements referenced in California
3 Health and Safety Code section 25249.7(f). Pursuant to the regulations promulgated under that
4 section, NRDC shall present this Consent Judgment to the California Attorney General's Office
5 within five (5) days after receipt of all necessary signatures.

6 **10.2** The Parties acknowledge that, pursuant to Health and Safety Code section 25249.7, a
7 noticed motion must be filed to obtain judicial approval of the Consent Judgment. Accordingly,
8 NRDC shall file a motion for approval of the settlement within a reasonable period of time after the
9 date this agreement is signed by all parties. NRDC also agrees to serve a copy of the noticed motion
10 to approve and enter the Consent Judgment on the California Attorney General's Office, consistent
11 with the requirements set forth in California Code of Regulations, title 11, section 3000(a).

12 **10.3** If this Consent Judgment is not approved by the Court, it shall be of no force or effect
13 and cannot be used in any proceeding for any purpose.

14 **11. ENTIRE AGREEMENT; MUTUAL DRAFTING**

15 **11.1** This Consent Judgment contains the sole and entire agreement and understanding of
16 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
17 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
18 express or implied, other than those contained herein have been made by any party hereto. No other
19 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
20 any of the parties.

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11.2 This Consent Judgment is the result of mutual drafting and no ambiguity found herein shall be construed in favor of or against any party.

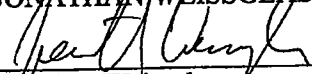
12. EXECUTION IN COUNTERPARTS

The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

APPROVED AS TO FORM:

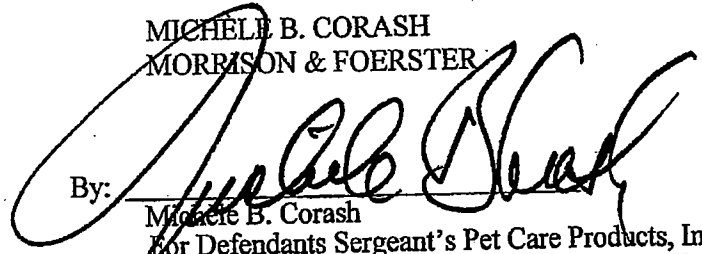
Dated: 9/30/2010

ALTSHULER BERZON LLP
JONATHAN WEISSGLASS

By: 
Jonathan Weissglass
For Plaintiff Natural Resources Defense Council

Dated:

MICHELE B. CORASH
MORRISON & FOERSTER

By: 
Michele B. Corash
For Defendants Sergeant's Pet Care Products, Inc., Albertsons, Inc., New Albertsons, Inc., PETCO Animal Supplies Stores, Inc., PetSmart, Inc., PetSmart Store Support Group, Inc., Lee's Pet Club, Inc., d/b/a Pet Club Stores, Red Cart Market, Inc., d/b/a Pet Club Stores, and Ralphs Grocery Co.

IT IS SO STIPULATED:

Dated:


By: _____

For Plaintiff Natural Resources Defense Counsel

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IT IS SO STIPULATED:

Dated:

By: 
For Plaintiff Natural Resources Defense Counsel

Dated:

By: _____
For Defendant Sergeant's Pet Care Products, Inc.

Dated:

By: _____
For Albertsons, Inc.,

Dated:

By: _____
For New Albertsons, Inc.,

Dated:

By: _____
For PETCO Animal Supplies Stores, Inc.

Dated:

By: _____
For Petsmart, Inc.

Dated:

By: _____
For PetSmart Store Support Group, Inc.

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By: _____
For Lee's Pet Club, Inc., d/b/a Pet Club Stores

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Dated:

9-27-10

By: [Signature]

For Defendant Sergeant's Pet Care Products, Inc.

Dated:

By: [Signature]

Ronald T. Mendes
Vice President

For Defendants New Albertsons, Inc. and SUPERVALU INC.

Dated:

By: [Signature]

Paul G. Rowan
Sr. Vice President and General Counsel
For Defendant Albertson's, Inc. and its affiliates, by
Albertson's LLC (successor by conversion to
Albertson's, Inc.)

Dated:

By: _____

For Defendant PETCO Animal Supplies, Inc.

Dated:

By: _____

For Defendants Petsmart, Inc., Petsmart Store Support Group, Inc.,

Dated:

By: _____

For Defendant Ralphs Grocery Co.,

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Dated:

By: _____

For Defendant Sergeant's Pet Care Products, Inc.

Dated:

By: _____

For Defendants New Albertsons, Inc. f/k/a/ Albertsons, Inc., and SUPERVALU INC.

Dated:

9/10/10

By: *Danah J. Davis*

For Defendant PETCO Animal Supplies, Inc.

Dated:

By: _____

For Defendants Petsmart, Inc., Petsmart Store Support Group, Inc.,

Dated:

By: _____

For Defendant Ralphs Grocery Co.,

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Dated:

By: _____

For Defendant Sergeant's Pet Care Products, Inc.

Dated:

By: _____

For Defendants New Albertsons, Inc. f/k/a/ Albertsons, Inc., and SUPERVALU INC.

Dated:

By: _____

For Defendant Albertson's, Inc. and its affiliates, by Albertson's LLC (successor by conversion to Albertsons, Inc.)

Dated:

By: _____

For Defendant PETCO Animal Supplies, Inc.

Dated: 9/24/10

By:  _____

For Defendants Petsmart, Inc., Petsmart Store Support Group, Inc.,

Dated:

By: _____

For Defendant Ralphs Grocery Co.,

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Dated:

By: _____

For Defendant Sergeant's Pet Care Products, Inc.

Dated:

By: _____

For Defendants New Albertsons, Inc. f/k/a/ Albertsons, Inc., and SUPERVALU INC.

Dated:

By: _____

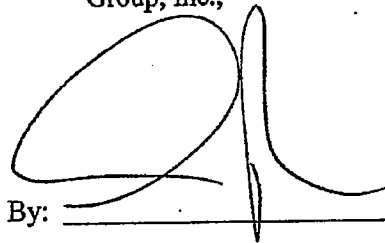
For Defendant PETCO Animal Supplies, Inc.

Dated:

By: _____

For Defendants Petsmart, Inc., Petsmart Store Support Group, Inc.,

Dated:


By: _____

For Defendant Ralphs Grocery Co.,

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Dated: 8.23.2010

By: Tamm Lee

TAMM LEE

For Defendant Lee's Pet Club, Inc. d/b/a Pet Club Stores
and Red Cart Market, Inc. d/b/a Pet Club Stores

Dated:

By: _____

For Defendant KV Vet Supply, Inc.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: Dec 10, 2010

Hon. Anthony Robert Freedman
Judge of the Superior Court

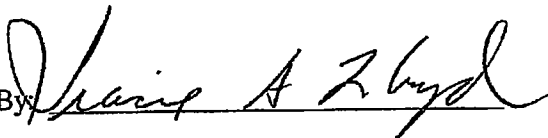
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Dated:

By: _____

For Defendant Lee's Pet Club, Inc. d/b/a Pet Club Stores
and Red Cart Market, Inc. d/b/a Pet Club Stores

Dated: 9/9/2010

By: 

For Defendant KV Vet Supply, Inc.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated:

Hon. Anthony Robert Freedman
Judge of the Superior Court